

v. 2866

No. 14348

United States
Court of Appeals
for the Ninth Circuit

MARIO BALESTRERI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Transcript of Record

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

OCT 1 1954

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court for the Northern District of California, Southern Division

No. 33192

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH PALM, MARY PALM HARE, Alias MARY PALM; WILLIAM LEVIN, FRANK McKEE, Alias "BLACKIE"; IRVING WEXLER, Alias WAXEY GORDON; JOSEPH LITTMAN, CHARLES SCHIFFMAN, BARNEY GOLD, ROBERT L. REYNOLDS, JOSEPH OLIVERO, Alias JOE OLIVER; MARIO BALESTRERI, SEBASTIANO NANI, BETTY S. HAINES, PETER S. HAINES, EVAN W. ROGERS, MICHAEL DE PINTO, EDWARD SAHATI, WOODY ZAINÉ, SALVATORE TERRANO, Alias "TAR-BABY"; DONALD MEYER, GEORGE WILLIAMS, Alias HARRY WEIMER; JOHN R. PHELPS, and JOHN DURAND,

Defendants.

INDICTMENT

Violation: (Jones-Miller Act, 21 U.S.C. 174)—
Concealment of Heroin—18 U.S.C. Section 371—Conspiracy.

First Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury charges: That Joseph Palm, defendant herein, on or about the 8th day of De-

ember, 1950, in the City and County of San Francisco, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 211 grains of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Joseph Palm then and there knew.

Second Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury further charges: That William Levin, defendant herein, on or about the 9th day of February, 1951, in the City of South San Francisco, County of San Mateo, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 7 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant William Levin then and there knew.

Third Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury further charges: That Frank McKee, alias "Blackie," defendant herein, on or about the 4th day of April, 1951, in the City of South San Francisco, County of San Mateo, State

and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately $4 \frac{2}{5}$ pounds of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Frank McKee, alias "Blackie," then and there knew.

Fourth Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury further charges: That Irving Wexler, alias Waxey Gordon, defendant herein, on or about the 12th day of April, 1951, in the City and County of San Francisco, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 5 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Irving Wexler, alias Waxey Gordon, then and there knew.

Fifth Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury further charges: That Joseph Littman, defendant herein on or about the 8th day of January, 1951, in the City of Burlingame, County of San Mateo, State and Northern District of Cali-

fornia, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 2 1/2 pounds of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Joseph Littman then and there knew.

Sixth Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury further charges: That Barney Gold, defendant herein, on or about the 22nd day of March, 1951, in the City of San Leandro, County of Alameda, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 2 1/5 pounds of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Barney Gold then and there knew.

Seventh Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury further charges: That Robert L. Reynolds, defendant herein, on or about the 19th day of February, 1951, in the City of Oakland, County of Alameda, State and Northern District of California, fraudulently and knowingly did conceal

and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 1 ounce of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Robert L. Reynolds then and there knew.

Eighth Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury further charges: That Joseph Olivero, alias Joe Oliver, defendant herein, on or about the 20th day of January, 1951, in the City of Burlingame, County of San Mateo, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 2 1/2 pounds of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Joseph Olivero, alias Joe Oliver, then and there knew.

Ninth Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury further charges: That Mario Balestreri, defendant herein, on or about the 23rd day of March, 1951, in the City of San Mateo, County of San Mateo, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a

certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 10 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Mario Balestreri then and there knew.

Tenth Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury further charges: That Sebastiano Nani, defendant herein, on or about the 10th day of February, 1951, in the City of San Jose, County of Santa Clara, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 5 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Sebastiano Nani then and there knew.

Eleventh Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury further charges: That Betty S. Haines, defendant herein, on or about the 16th day of March, 1951, in the City of Millbrae, County of San Mateo, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity

particularly described as one package containing approximately 10 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Betty S. Haines then and there knew.

Twelfth Count: (Jones-Miller Act, 21 U.S.C. 174)

The Grand Jury further charges: That Peter S. Haines, defendant herein, during the month of April, 1951, the exact date being to the Grand Jury unknown, in the City and County of San Francisco, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 3 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Peter S. Haines then and there knew.

Thirteenth Count: (Jones-Miller Act, 21
U.S.C. 174)

The Grand Jury further charges: That Evan W. Rogers, defendant herein, on or about the 11th day of February, 1951, in the City of Palo Alto, County of Santa Clara, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity

particularly described as one package containing approximately 17 1/2 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Evan W. Rogers then and there knew.

Fourteenth Count: (Jones-Miller Act,
21 U.S.C. 174)

The Grand Jury further charges: That Evan W. Rogers, defendant herein, during the month of April, 1951, the exact date being to the Grand Jury unknown, in the City of Colma, County of San Mateo, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 2 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Evan W. Rogers then and there knew.

Fifteenth Count: (Jones-Miller Act, 21
U.S.C. 174)

The Grand Jury further charges: That Michael De Pinto, defendant herein, on or about the 23rd day of February, 1951, in the City and County of San Francisco, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation

of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 5 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Michael De Pinto then and there knew.

Sixteenth Count: (Jones-Miller Act, 21
U.S.C. 174)

The Grand Jury further charges: That Michael De Pinto, defendant herein, on or about the 14th day of April, 1951, in the City and County of San Francisco, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 5 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Michael De Pinto then and there knew.

Seventeenth Count: (Jones-Miller Act, 21
U.S.C. 174)

The Grand Jury further charges: That Edward Sahati and Woody Zaine, defendants herein, on or about the 26th day of February, 1951, in the City of South San Francisco, County of San Mateo, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity

of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 5 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendants Edward Sahati and Woody Zaine then and there knew.

Eighteenth Count: (Jones-Miller Act, 21
U.S.C. 174)

The Grand Jury further charges: That Salvatore Terrano, alias "Tar-Baby," defendant herein, on or about the 12th day of February, 1951, in the City and County of San Francisco, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 5 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Salvatore Terrano, alias "Tar-Baby," then and there knew.

Nineteenth Count: (Jones-Miller Act, 21
U.S.C. 174)

The Grand Jury further charges: That Donald Meyer, defendant herein, on or about the 13th day of February, 1951, in the City of South San Francisco, County of San Mateo, State and Northern

District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 2 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Donald Meyer then and there knew.

Twentieth Count: (Jones-Miller Act, 21
U.S.C. 174)

The Grand Jury further charges: That Donald Meyer, defendant herein, during the month of April, 1951, the exact date being to the Grand Jury unknown, in the City and County of San Francisco, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 2 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant Donald Meyer then and there knew.

Twenty-First Count: (Jones-Miller Act,
21 U.S.C. 174)

The Grand Jury further charges: That George Williams, alias Harry Weimer, defendant herein, on or about the 10th day of February, 1951, in the

City and County of San Francisco, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 5 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant George Williams, alias Harry Weimer, then and there knew.

Twenty-Second Count: (Jones-Miller Act, 21
U.S.C. 174)

The Grand Jury further charges: That John R. Phelps, defendant herein, on or about the 27th day of January, 1951, in the City of San Mateo, County of San Mateo, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 7 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant John R. Phelps then and there knew.

Twenty-Third Count: (Jones-Miller Act, 21
U.S.C. 174)

The Grand Jury further charges: That John Durand, defendant herein, on or about the 17th

day of March, 1951, in the City of San Mateo, County of San Mateo, State and Northern District of California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a certain quantity of a derivative and preparation of morphine, to-wit, a lot of heroin, in quantity particularly described as one package containing approximately 3 ounces of heroin, and the said heroin had been imported into the United States of America contrary to law, as the defendant John Durand then and there knew.

Twenty-Fourth Count: (Conspiracy, 18
U.S.C §371)

The Grand Jury further charges: That Joseph Palm, Mary Palm Hare, alias Mary Palm; William Levin, Frank McKee, alias "Blackie"; Irving Wexler, alias Waxey Gordon; Joseph Littman, Charles Schiffman, Barney Gold, Robert L. Reynolds, Joseph Olivero, alias Joe Oliver; Mario Balestreri, Sebastiano Nani, Betty S. Haines, Peter S. Haines, Evan W. Rogers, Michael De Pinto, Edward Sahati, Woody Zaine, Salvatore Terrano, alias "Tar-Baby"; Donald Meyer, George Williams, alias Harry Weimer; John R. Phelps and John Durand, defendants herein, at a time and place to said Grand Jury unknown, did conspire together and with Abraham Chalupowitz, alias Abe Chapman, Harry Winkelblack, alias Harry Wink, and Rose Mary Winkelblack, alias Rose Mary Wink, hereinafter named as co-conspirators but not as defendants herein, and with other persons whose names are

to said Grand Jury unknown, to sell, dispense and distribute not in or from the original stamped packages quantities of a derivative and preparation of morphine, to-wit, heroin, in violations of Sections 2553 and 2557 of Title 26 United States Code, and to conceal and facilitate the concealment and transportation of quantities of a derivative and preparation of morphine, to-wit, heroin, which heroin had been imported into the United States of America contrary to law, as the said defendants, and each of them, then and there well knew, in violation of Section 174 of Title 21 United States Code; that thereafter and during the existence of said conspiracy one or more of the defendants, hereinafter mentioned by name, at the time and place hereinafter set forth, did the following acts in furtherance thereof and to effect the objects of the conspiracy aforesaid:

Overt Acts

1. During the month of August, 1950, the exact date being to the Grand Jury unknown, the co-conspirator Abraham Chalupowitz, alias Abe Chapman, hereinafter referred to as Abraham Chalupowitz, the defendant Joseph Palm, and the defendant George Williams had a conversation within the premises of the Bay Meadows Club, 98 Eddy Street, San Francisco, California.

2. On or about February 23, 1951, the defendant Mary Palm Hare, alias Mary Palm, and the co-conspirator Abraham Chalupowitz had a conversa-

tion in the presence of the co-conspirator Harry Winkelblack, alias Harry Wink, hereinafter referred to as Harry Winkelblack, in the vicinity of Bone's Corner, 186 Eddy Street, San Francisco, California.

3. On or about January 10, 1951, the defendant Joseph Palm, the co-conspirator Abraham Chalupowitz, and the co-conspirator Harry Winkelblack had a conversation in the vicinity of Bone's Corner, 186 Eddy Street, San Francisco, California.

4. During the month of January, 1951, the exact date being to the Grand Jury unknown, the co-conspirator Abraham Chalupowitz and the defendant William Levin had a conversation on 7th Street, between Market and Mission Streets, San Francisco, California.

5. On or about February 4, 1951, the defendant William Levin, the defendant Frank McKee, the co-conspirator Abraham Chalupowitz, and the co-conspirator Harry Winkelblack had a conversation in the vicinity of St. Vincent's Church, San Mateo, California, at which time the defendant William Levin received a package from the said co-conspirator Harry Winkelblack.

6. On or about February 9, 1951, the defendant William Levin, the defendant Frank McKee, the co-conspirator Abraham Chalupowitz and the co-conspirator Harry Winkelblack had a conversation in the vicinity of Oliver's Restaurant, 101 Lux Street, South San Francisco, California, at which

time the defendant William Levin received a package from the said co-conspirator Harry Winkelblack.

7. On or about February 11, 1951, the defendant William Levin, the defendant Frank McKee, the co-conspirator Abraham Chalupowitz and the co-conspirator Harry Winkelblack had a conversation in the vicinity of Oliver's Restaurant, 101 Lux Street, South San Francisco, California, at which time the defendant William Levin handed a package to the co-conspirator Harry Winkelblack.

8. On or about February 20, 1951, the defendant Frank McKee received a package from the co-conspirator Harry Winkelblack within the premises known as Kelley's Tavern, 19th and Irving Streets, San Francisco, California.

9. During the months of March, 1951, or April, 1951, the exact date being to the Grand Jury unknown, the co-conspirator Abraham Chalupowitz, the defendant Frank McKee and the defendant William Levin had a conversation within the premises of Uncle Tom's Cabin on El Camino Real, San Bruno, California.

10. On or about April 2, 1951, the co-conspirator Abraham Chalupowitz cashed a check for \$2,000, within the premises of Uncle Tom's Cabin on El Camino Real, San Bruno, California.

11. On or about April 2, 1951, the defendant Frank McKee traveled by airplane from South San Francisco, California to New York, New York.

12. During the month of April, 1951 and some time after April 4, 1951, the exact date being to the Grand Jury unknown, the defendant William Levin transmitted by mail a sum of money to Irving Wexler, Brooklyn, New York.

13. On or about December 20, 1950, February 3, 1951, February 12, 1951, February 21, 1951, February 23, 1951 and April 7, 1951, the defendant Irving Wexler, alias Waxey Gordon, hereinafter referred to as Irving Wexler, from his home in Brooklyn, New York, conversed by telephone with the co-conspirator Abraham Chalupowitz in his home in San Mateo, California.

14. During the months of February, 1951 and March, 1951, the exact dates being to the Grand Jury unknown, the defendant Irving Wexler conversed by long-distance telephone with the co-conspirator Abraham Chalupowitz and the co-conspirator Harry Winkelblack in San Mateo County, California.

15. On or about January 4, 1951, the defendant Joseph Littman, in Paterson, New Jersey, received a letter which had heretofore been mailed to him by the co-conspirator Harry Winkelblack from San Mateo County, California.

16. On or about January 6, 1951, the defendant Joseph Littman caused to be mailed a package from Bronx, New York, to the co-conspirator Harry Winkelblack in Burlingame, California.

17. On or about January 18, 1951, the defendant Joseph Littman received in Paterson, New Jersey, a sum of money which had heretofore been mailed to him by the co-conspirator Harry Winkelblack in San Bruno, California.

18. On or about February 15, 1951, the defendant Joseph Littman, in Paterson, New Jersey, received a letter which had heretofore been mailed to him by the co-conspirator Harry Winkelblack in South San Francisco, California.

19. On or about February 21, 1951, the defendant Joseph Littman caused to be mailed a package from New York, New York to the co-conspirator Harry Winkelblack in Burlingame, California.

20. On or about February 26, 1951, the defendant Joseph Littman in Paterson, New Jersey, received a package which had heretofore been mailed to him by the co-conspirator Harry Winkelblack in San Mateo, California.

21. On or about March 18, 1951, the defendant Charles Schiffman spoke by long-distance telephone to the co-conspirator Harry Winkelblack in Belmont, California.

22. On or about March 20, 1951, the defendant Barney Gold caused to be transported by air-express a package from Chicago, Illinois, to San Leandro, California.

23. During the latter part of 1950, the exact date being to the Grand Jury unknown, the defendant

Robert L. Reynolds had a conversation with the co-conspirator Abraham Chalupowitz in the home of the said co-conspirator Abraham Chalupowitz in San Mateo, California.

24. On or about January 25, 1951, the defendant Robert L. Reynolds received a long-distance telephone call at St. Paul, Minnesota, from the co-conspirator Abraham Chalupowitz in San Mateo, California.

25. On or about February 10, 1951, the defendant Robert L. Reynolds received a long-distance telephone call at St. Paul, Minnesota, from the co-conspirator Abraham Chalupowitz in San Mateo, California.

26. On or about February 15, 1951, the defendant Robert L. Reynolds sent a package from Minneapolis, Minnesota, to the co-conspirator Harry Winkelblack, which package was received by the co-conspirator Harry Winkelblack on or about February 19, 1951, at Oakland, California.

27. On or about January 15, 1951, the co-conspirator Harry Winkelblack addressed a letter to the defendant Joseph Olivero in Kansas City, Missouri.

28. On or about January 17, 1951, the defendant Joseph Olivero in Kansas City, Missouri, conversed by long-distance telephone with the defendant Mario Balestreri in San Jose, California.

29. On or about January 17, 1951, the defendant Joseph Olivero mailed a package from Kansas City,

Missouri, to the co-conspirator Harry Winkelblack, which package was received by the co-conspirator Harry Winkelblack on or about January 20, 1951, at Burlingame, California.

30. On or about February 22, 1951, the co-conspirator Abraham Chalupowitz and the co-conspirator Harry Winkelblack drove to the outskirts of Redwood City, California, for a meeting with the defendant Mario Balestreri.

31. On or about February 22, 1951, the defendant Mario Balestreri delivered a package to the co-conspirator Abraham Chalupowitz on Bay Shore Highway, on the outskirts of Redwood City, California.

32. On or about February 10, 1951, the co-conspirator Abraham Chalupowitz and the co-conspirator Harry Winkelblack drove in an automobile to the vicinity of 1577 McKendrie Street, San Jose, California.

33. On or about February 10, 1951, the defendant Sebastiano Nani delivered a package to the co-conspirator Abraham Chalupowitz within the premises at 1577 McKendrie Street, San Jose, California.

34. On or about February 10, 1951, the defendant Sebastiano Nani and the co-conspirator Abraham Chalupowitz placed a carton in an automobile parked in the vicinity of 1577 McKendrie Street, San Jose, California.

35. During the month of December, 1950, and during the months of January, February and

March, 1951, the exact dates being to the Grand Jury unknown, the co-conspirator Abraham Chalupowitz and the co-conspirator Harry Winkelblack drove in an automobile to the vicinity of 197 Cook Street, San Francisco, California.

36. During the month of December, 1950, and during the months of January, February and March, 1951, the exact dates being to the Grand Jury unknown, the co-conspirator Abraham Chalupowitz entered the premises at 197 Cook Street, San Francisco, California, carrying on each occasion a package.

37. During the month of April, 1951, the exact date being to the Grand Jury unknown, the defendant Peter Haines received a package from the defendant William Levin in the vicinity of 197 Cook Street, San Francisco, California.

38. On or about February 23, 1951, the defendant Betty S. Haines received a package from the co-conspirator Harry Winkelblack, in the presence of the co-conspirator Abraham Chalupowitz, in the vicinity of Smith's Drive-In on El Camino Real, Millbrae, California.

39. On or about March 16, 1951, the defendant Betty S. Haines received a package from the co-conspirator Harry Winkelblack in the vicinity of Smith's Drive-In on El Camino Real, Millbrae, California.

40. On or about January 3, 1951, the defendant Evan W. Rogers received a package from the co-

conspirator Abraham Chalupowitz in the vicinity of 1131-13th Avenue, Oakland, California.

41. On or about February 19, 1951, the defendant Evan W. Rogers, the co-conspirator Abraham Chalupowitz, and the co-conspirator Harry Winkelblack had a conversation in the vicinity of Greenville Road, Livermore, California.

42. During the month of April, 1951, the exact date being to the Grand Jury unknown, the defendant Evan W. Rogers received a package from the defendant William Levin in Colma, San Mateo County, California.

43. On or about January 21, 1951, the defendant Michael DePinto received a package from the co-conspirator Abraham Chalupowitz in the vicinity of Oliver's Restaurant, 101 Lux Street, South San Francisco, California.

44. On or about February 22, 1951, the defendant Michael DePinto traveled from Portland, Oregon to San Francisco, California.

45. On or about February 23, 1951, the defendant Michael DePinto received a package from the co-conspirator Harry Winkelblack in the vicinity of the Governor Hotel, San Francisco, California.

46. On or about March 17, 1951, the defendant Michael DePinto, the co-conspirator Abraham Chalupowitz, and the co-conspirator Harry Winkelblack had a conversation within the premises of the Governor Hotel, San Francisco, California.

47. During the month of April, 1951, the exact date being to the Grand Jury unknown, the defendant Michael DePinto received a package from the defendant William Levin within the premises of the Governor Hotel, San Francisco, California.

48. On or about January 30, 1951, the defendant Edward Sahati, the defendant Woody Zaine, and the co-conspirator Harry Winkelblack had a conversation in the Mapes Hotel, Reno, Nevada.

49. On or about February 13, 1951, the defendant Edward Sahati gave a sum of money to the co-conspirator Harry Winkelblack in or near the Mapes Hotel, Reno, Nevada.

50. On or about February 26, 1951, the defendant Woody Zaine received a package from the co-conspirator Harry Winkelblack in the vicinity of the San Francisco Airport, South San Francisco, California.

51. On or about March 16, 1951, the defendant Woody Zaine and the co-conspirator Harry Winkelblack had a conversation in the Mapes Hotel, Reno, Nevada.

52. On or about March 16, 1951, the defendant Edward Sahati and the co-conspirator Harry Winkelblack had a conversation at the Colony Club, Reno, Nevada.

53. On or about February 2, 1951, on or about February 12, 1951, on or about March 14, 1951, and on divers others days during the months of February

and March, 1951, the exact dates being to the Grand Jury unknown, the defendant Salvatore Terrano, alias "Tar-Baby," hereinafter referred to as Salvatore Terrano, received, on each occasion, a package from the co-conspirator Harry Winkelblack, in the presence of the co-conspirator Abraham Chalupowitz, while within the premises of the Twin States Novelty Store, 1033 Mission Street, San Francisco, California.

54. On or about March 2, 1951, the defendant Salvatore Terrano handed a sum of money to the co-conspirator Harry Winkelblack within the premises of the Twin States Novelty Store, 1033 Mission Street, San Francisco, California.

55. On or about March 3, 1951, the defendant Salvatore Terrano handed a sum of money to the co-conspirator Harry Winkelblack within the premises of the Twin States Novelty Store, 1033 Mission Street, San Francisco, California.

56. On or about January 16, 1951, the defendant Donald Meyer, the co-conspirator Abraham Chalupowitz, and the co-conspirator Harry Winkelblack had a conversation within the premises known as Oliver's Restaurant, 101 Lux Street, South San Francisco, California, at which time the defendant Donald Meyer handed a sum of money to the co-conspirator Abraham Chalupowitz.

57. On or about February 13, 1951, the defendant Donald Meyer received a package from the co-conspirator Harry Winkelblack near Bay Shore High-

way, on the outskirts of South San Francisco, California.

58. On or about March 15, 1951, the defendant Donald Meyer received a package from the co-conspirator Harry Winkelblack in the vicinity of Smith's Drive-In on El Camino Real, Millbrae, California.

59. On or about March 16, 1951, the defendant Donald Meyer received a package from the co-conspirator Harry Winkelblack in the vicinity of Smith's Drive-In on El Camino Real, Millbrae, California.

60. During the month of April, 1951, on two separate occasions, the defendant Donald Meyer received a package from the defendant William Levin in San Francisco, California, the exact dates and places being to the Grand Jury unknown.

61. On or about February 10, 1951, the co-conspirator Abraham Chalupowitz, the defendant George Williams, and the co-conspirator Harry Winkelblack had a conversation within the premises known as Kelley's Tavern, 19th and Irving Streets, San Francisco, California.

62. On or about February 10, 1951, in the vicinity of the Shriners' Hospital for Crippled Children, San Francisco, California, in the presence of the co-conspirator Abraham Chalupowitz, the defendant George Williams received a package from the co-conspirator Harry Winkelblack.

63. On or about March 3, 1951, the defendant George Williams gave the co-conspirator Harry Winkelblack a sum of money within the premises of Kelley's Tavern, 19th and Irving Streets, San Francisco, California.

64. On or about March 13, 1951, the defendant George Williams received a package from the co-conspirator Harry Winkelblack while driving in an automobile in the vicinity of Kelley's Tavern, 19th and Irving Streets, San Francisco, California, at which time the defendant George Williams handed to the co-conspirator Harry Winkelblack a sum of money.

65. On or about February 12, 1951, the defendant John R. Phelps received a package from the co-conspirator Harry Winkelblack in the vicinity of the Benjamin Franklin Hotel, San Mateo, California.

66. On or about March 16, 1951, the defendant John R. Phelps, the co-conspirator Abraham Chalupowitz, and the co-conspirator Harry Winkelblack had a conversation in the vicinity of the Benjamin Franklin Hotel, San Mateo, California.

67. On or about February 17, 1951, the defendant John Durand, the co-conspirator Abraham Chalupowitz and the co-conspirator Harry Winkelblack had a conversation within the premises of the Benjamin Franklin Hotel, San Mateo, California.

68. On or about March 16, 1951, the defendant John Durand traveled from Phoenix, Arizona, to South San Francisco, California.

69. On or about March 17, 1951, the defendant John Durand received a package from the co-conspirator Harry Winkelblack within the premises of the Benjamin Franklin Hotel, San Mateo, California.

A True Bill.

/s/ SIDNEY H. KESSLER,
Foreman.

/s/ CHAUNCEY TRAMUTOLO,
United States Attorney.

Approved as to Form:

/s/ J. K.

Penalty: Counts 1 through 23: Imprisonment for not more than 10 years and fine of not more than \$5,000.00, on each count.

Count 24: Imprisonment for not more than 5 years or fine of not more than \$10,000.00, or both.

Bail, \$10,000.00 for each defendant.

/s/ LOUIS E. GOODMAN,
District Judge.

[Endorsed]: Filed March 7, 1952.

United States District Court for the Northern
District of California, Southern Division

No. 33192

UNITED STATES OF AMERICA,

vs.

MARIO BALESTRERI.

JUDGMENT AND COMMITMENT

On this 4th day of September, 1953, came the attorney for the government, and the defendant appeared in person and with counsel.

It Is Adjudged that the defendant has been convicted upon his plea of Not Guilty and a Verdict of Guilty of the offense of violation of Jones-Miller Act, 21 U.S.C. 174—(Defendant, Mario Balestreri on or about March 23, 1951, at San Mateo, California, fraudulently and knowingly did conceal and facilitate the concealment and transportation of a lot of heroin, one package containing approximately 10 ounces of heroin, and said heroin had been imported into United States of America contrary to law, as said defendant then and there knew) as charged in Count 9; and of violation of Title 18, United States Code, Section 371—Conspiracy to violate §§2553 and 2557, 26 USC (sale of morphine), and §174, 21 USC (Concealment and transportation of heroin which had been imported into the United States of America contrary to law), (On or about February 22, 1951, defendant Mario Balestreri, on Bay Shore Highway, on the outskirts of Redwood

City, Calif., did a certain overt act in furtherance of said conspiracy and to effect the objects thereof), as charged in Count 24 of indictment; and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court.

It is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of Three (3) Years and pay a fine of One Dollar (\$1.00) on Count 9; Three (3) Years on Count 24.

Ordered that said sentences of imprisonment commence and run Concurrently.

(Indictment contains 24 counts. Defendant not named in remaining counts.)

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

/s/ LOUIS E. GOODMAN,
United States District Judge.

The Court recommends commitment to an institution to be designated by U. S. Attorney General.

[Endorsed]: Filed September 4, 1953.

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

The defendant, Mario Balestreri, moves the court to grant him a new trial for the following reasons:

That since the verdict and judgment in the above-entitled case against the defendant newly discovered evidence shows that the defendant, Mario Balestreri, was substantially prejudiced and deprived of a fair trial; that such prejudice resulted from the fact that the sole witness against the defendant, Harry Winkelblack, while testifying as a government witness, was testifying under threats, duress and promises made against him and to him by Agents of the Government, and testified falsely against said defendant.

The evidence showing the bias and prejudice of this witness against the defendant herein could not have been discovered with due diligence at or before the time of trial, and has just been discovered and could not have been discovered prior to the verdict and judgment in the case and by the exercise of due diligence.

This motion is based upon all the files and records in the above-entitled proceeding and upon the Affidavit of James E. Burns attached hereto and the Exhibits attached to said Affidavit.

Wherefore, defendant prays that this Court grant

said motion for a new trial and afford such other relief as may be appropriate.

/s/ JAMES E. BURNS,
Attorney for Defendant,
Mario Balestreri.

Receipt of copy acknowledged.

[Endorsed]: Filed March 11, 1954.

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION
FOR A NEW TRIAL

State of California,
City and County of San Francisco—ss.

James E. Burns, being first duly sworn, deposes and says:

That he is the attorney for the defendant, Mario Balestreri, in the above-entitled proceeding; that said Mario Balestreri was charged with offenses against the Narcotic Laws of the United States in the indictment herein and after a trial by jury was convicted and thereafter sentenced. The only witness testifying against the defendant, Mario Balestreri, was one Harry Winkelblack, who testified on behalf of the Government. In substance said witness testified as to several meetings between defendant, Mario Balestreri, and the co-defendant Abraham Chalupowitz, also known as Abe Chapman, at vari-

ous times and at various places in the Counties of Santa Clara and San Mateo. These meetings were denied by the defendant who took the stand on his own behalf and were likewise denied by the co-defendant, Abe Chapman, who prior to the time of his testimony had pled guilty in the charges against him contained in said indictment.

Since the above-mentioned trial, verdict and sentence affiant has come into possession of certain documents and copies of the same are attached hereto marked respectively Exhibits "A" and "B," and by this reference are incorporated herein. Affiant is informed and believes and upon such information and belief alleges that the copies of said documents attached hereto are true, genuine and authentic copies of the originals of said documents. The document marked Exhibit "A" is a copy of a letter from Roy Casey, Inspector, U. S. Bureau of Prisons, addressed to Frank Loveland, an official of said Bureau of Prisons in Washington, D. C., dated May 18, 1952. The document hereto attached marked Exhibit "B" is a copy of a teletype message from said Roy Casey, Inspector, Bureau of Prisons, addressed to M. E. Alexander, Assistant Director, Bureau of Prisons, dated May 20, 1952.

Said Exhibit "A" shows that Harry Winkelblack, the only witness on behalf of the Government, in testifying against the defendant, Mario Balestreri, was testifying under duress, promises and threats, and that his testimony was biased and prejudiced against the defendant and was knowingly induced

by the various agents of the Narcotic Bureau and the Assistant United States Attorney who procured the indictment herein and instigated the prosecution against this moving defendant. Affiant, as attorney for the defendant, Mario Balestreri, was unable to prove at the trial of this case the bias and prejudice of said witness or the threats and promises made against him or to him prior to the time said witness testified, or to establish at the time of said trial by competent evidence that said witness was testifying under compulsion and that his testimony was induced by the various threats, promises, favors and treatment all as more particularly described in said Exhibit "A." The defendant testified at said trial as to his whereabouts at the particular times and places as testified to by prosecution witness and stated in substance that he was not present at the times or at the places so testified to as to the prosecution witness, and he was corroborated in said testimony by two disinterested witnesses who testified as to his presence at places different from those testified to by the witness, Harry Winkelblack. The defendant, in taking the stand on his own behalf, had testified as to prior criminal convictions. Affiant as attorney for said defendant was unable to show at the time of said trial because such evidence was not available and could not be discovered with due diligence, that the witness Harry Winkelblack, who is named as a co-conspirator but not as a defendant, was a biased, prejudiced, untruthful and false witness against the defendant and that his testimony against the

defendant had been procured and induced by agents of the Narcotic Bureau and the Assistant United States Attorney in and for the above-named district, by threats, promises, and favors as set forth in the Exhibits hereto attached. Had affiant been able, as counsel for said defendant, to prove and show the threats, promises and favors given and made to said witness for the Government, affiant would have established that said witness was biased, prejudiced and testified falsely against said defendant, and that said testimony of said witness was known to be false by said agents of the Government, and the credibility of said witness would have been destroyed.

Wherefore, affiant prays that said defendant be afforded a new trial on the ground of newly discovered evidence as herein set forth.

/s/ JAMES E. BURNS.

Subscribed and sworn to before me this 11th day of March, 1954.

[Seal] /s/ PHYLLIS KNORR,
Notary Public in and for the City and County of
San Francisco, State of California.

EXHIBIT "A"

(Copy)

San Francisco, Calif.,
May 18, 1952.

Air Mail

Mr. Frank Loveland,
Bureau of Prisons,
Washington, D. C.

Dear Frank:

When Alex called me last Wednesday morning at San Bernardino by long distance he instructed me to return to San Francisco immediately to make further inquiry into the matter of detention of federal prisoner Harry Winkelblack and to report to you since both he and Mr. Bennett would be away from Washington for several days. I am therefore giving you this report and will try to make it as short, yet explicit, as possible. I have run into some things and some angles of the matter which I only suspected before but which I know have full proof of, and they are very serious.

When I arrived in San Francisco about 2 p.m., on Thursday, I went directly to the Marshal's office but found that he was out of town and would not return until tomorrow, May 19, but I conferred with his Chief Deputy. I also got in touch with Mr. Joe Karesh, the Assistant U. S. Attorney, who is in charge of prosecution of the narcotic cases in which Winkelblack is mixed up. Mr. Karesh arranged for

a conference with Narcotic Agents Gentry and Craig, who are handling the case, and this was held Friday morning in Mr. Karesh's office with the two Agents, Mr. Karesh and myself being present.

Mr. Karesh has made a full report to the Attorney General, it seems, concerning the place and kind of detention treatment he and the Narcotic Agents believe Winkelblack must receive if he is to continue to co-operate with them in giving the kind of testimony and evidence they will have to present to the jury when the case comes to trial. Mr. Karesh strongly insists that Winkelblack is the key witness in the case and if he balks or turns out to be a non-cooperating witness on the stand, their case is lost. He further insists that Winkelblack will be just such a witness if anything is done to tighten up on the custody under which he is being held and if any of his special privileges now being allowed are taken from him. Both Mr. Gentry and Mr. Craig, the Narcotic Agents, concur in this belief and they are demanding that nothing be done to disturb or irritate Winkelblack. They asked that I pass this belief of theirs on to Mr. Bennett and to make it plain that they believe if Winkelblack's trusty and other undue privileges are taken from him and he is kept in maximum security quarters along with other jail inmates of his type and status, successful prosecution of the case will be so jeopardized that it might as well be dropped right now. In fact, Mr. Karesh went so far as to say that he would favor stopping right now if the Bureau does a thing that

will disturb Winkelblack's contented attitude, call off the prosecution and then give full statement to the newspapers as to the reason and place all the blame on the Bureau of Prisons. Mr. Gentry said that he would favor, in that event, taking the whole matter before the federal grand jury for an investigation. So you see how strongly they feel in the matter. I told them that I'd make no recommendations to the Bureau until I went back to the Contra Costa County Jail to make some further investigation into the situation. This I did yesterday and here are the facts as I found them.

When I arrived at the jail shortly before noon I found that the Chief Jailer was off duty always on Saturdays and Sundays, also that the Sheriff was never in town on the week end. I went directly to the prisoner intake entrance of the jail which is thru an open-front garage and into a sort of sally-port into a ground level basement. This sally-port has two security doors but one of which is only kept locked—these doors are key locked only and the officer on duty just inside the inner door carries keys to both doors dangling from a shallow pocket on the side of his trousers. I had never met this particular officer before, but when I told him who I was, he immediately opened the first door and let me in, but never asked for my credentials, nor did he ask if I had a gun until about fifteen minutes later when we went farther into the jail. It was at this first contact with the guard that I learned about both the Sheriff and Chief Jailer being off duty.

This officer was a young man and appeared to be very intelligent and courteous, but lacking in caution by allowing a total stranger into the jail in such a way as to make it easily possible to release Winkelblack, along with all other prisoners in the basement quarters of the jail, or to kill him and make a successful get-away. At the insistence of Mr. Karesh and the Narcotic Agents, Winkelblack is given these basement trusty privileges, along with others not allowed the jail's other seven trusties which will be mentioned further down in this report.

After talking with the guard for some minutes concerning general matters and the duties and privileges allowed Winkelblack, I asked where Winkelblack was. Said that I'd like to see and talk with him and to check on his quarters. I was told that he was then in the jail's holdover dormitory, into which all newly arrived prisoners are kept until they can be processed into the jail, where another inmate was cutting his hair. Then I asked to be taken to Winkelblack's quarters to look them over while his barber work was being finished. The officer and I then walked down the main basement hallway to the storeroom and clothes room where Winkelblack has a bed. The guard discovered that the door to this room was locked and he said that he had no key to it, so would have to get Winkelblack's key—the only one he, the guard, knew anything about and which Winkelblack kept in his possession all the time, both day and night. It was brought out then that the prisoner was never locked in his quarters, that he

had access to the entire basement quarters from which only one locked door kept him from outside freedom, that he often was given work to do on the upper floors and to the jail roof where he could go for sun and outdoor air. It appears that he has many duties to perform as trusty in charge of jail uniforms, inmates' clothes, issuing of towels and other supplies, doing minor repair jobs and replacing electric light bulbs, etc., and has many uncontrolled opportunities for irregularities and connivance. I found in his quarters a pair of scissors which he is allowed to keep at all times, two screwdrivers, and any number of articles which could be easily converted into tools or weapons, and his freedom is so unhampered that he has unlimited opportunities to assault or overpower the one guard posted in the jail basement, lock him in a cell or in the sally-port and escape with all the guard's keys, and immediately outside a number of automobiles are always parked. He could easily get a gun into the jail and possibly without much difficulty could force his way into the main jail office on the floor above where prisoners' cash is kept in an easily opened drawer sometimes to the amount of two thousand dollars or more. In addition to these bad custodial practices with a prisoner who has done time in Joliet, Leavenworth and San Quentin (where he is now under a sentence up to 20 years), and is now mixed up in what Mr. Karesh and Mr. Gentry insist on calling the biggest narcotic case the Government has ever had, Winkelblack is given

the privilege of visiting with his wife every Sunday in strict privacy of the jail's consultation room for several hours at a time and without adequate precautions against contraband being taken. It should be added, however, that his conduct is said to be without suspicion since being in the Contra Costa County Jail, and all jail officials, especially the Sheriff, who happens not to have seen Winkelblack in several weeks (according to Winkelblack's statement), also the Assistant U. S. Attorney, Mr. Kar-esh and the Narcotic Agents, say they have the utmost confidence in the prisoner and have no fear whatsoever that he will make an effort to escape nor that he can or will be gotten to from the outside by either his friends or his enemies in the narcotic ring who are said to be numerous and desperate.

On my previous visits to the Contra Costa County Jail where Winkelblack is now being kept, and to my visit to the Solano County Jail at Fairfield, Calif., where he was formerly kept and from which he had to be moved because of gross irregularities and laxity, I avoided talking with him because the officials who are handling the big narcotic case were very desirous that nothing be done to disturb Winkelblack and put a fear in his mind that might cause him to go back on his promises to them and fail to come thru with his vital testimony. But at this time I am of the opinion that too much is involved from the Bureau's standpoint and responsibility, consequently I had a long and very frank talk with him in an effort to get information and details about

which I have previously had only second hand reports and misinformation. My talk with the prisoner was without any tension whatsoever and I found him very frank and open in answering my questions and in giving me most of the information that I sought. Altho he appeared to be truthful he did evade the answers to some questions but, on the whole, I got from him the full story of his stay in the Solano County Jail, and of his escapes from it.

He was committed there sometime last August, I believe, and shortly thereafter was brought before the federal grand jury in San Francisco about three or four days each week. In order to make a more contented and tractable witness out of him, the U. S. Attorney's office and the Narcotic Agents asked the jail officials to make a trusty of Winkelblack and to give him some work to do to keep him busy and to afford him some special privileges. Winkelblack seems to have made an excellent records clerk for the jail and soon became almost a member of the jail staff. He worked in the jail and sheriff's offices, which are outside the locked portion of the jail, he was permitted to go down into town on any occasions he wished to and before very long his freedom and privileges were not controlled in the least.

During my long talk with Winkelblack yesterday he told the following account of his activities in the Solano County Jail. By the time he had been there for five or six weeks, his pattern of activities was pretty well established both as to his duties and freedom in and out of the jail and as to his appear-

ance before the grand jury which generally took place from Mondays to Wednesdays or Thursdays. When he was established so securely with both the federal officers and the jail officials and with the knowledge and consent of the sheriff and head jailer, and possibly others whom he refused to name to me, he made the most of the opportunity to get out of the jail and for nearly every week end from October to just before the Christmas holidays he left the jail and spent the time with his wife over in Berkeley, about 25 miles away. His freedom to make these week-end excursions to his wife's apartment went along unrestricted until December 21, I believe it was, when one of the deputy sheriffs who was not in on the matter happened to be assigned to jail duty and made the discovery about 8 o'clock that morning that Winkelblack was out of jail. When Sheriff Joyce was informed of his absence he knew, of course, just where to find Winkelblack so he phoned him at his wife's apartment in Berkeley to return to jail immediately and told him that his "inexperienced deputy" had put out an alarm about his escape from the jail and that there was nothing for him to do but to return immediately. Winkelblack stated to me that it was his intention to stay out of jail and at his wife's apartment over the week end and Xmas holidays and that the Sheriff, and possibly others, had given their consent to this, but the dumb deputy sheriff broke up the plan. Winkelblack stated to me that he thought, since the alarm of his escape had gone out over the police radio, it would be the best to phone Federal

Narcotic Agent Craig and have him come over to Berkeley and pick him up and take him back to the jail, and this he did. Winkelblack claims that the occasion just mentioned was the last time he escaped from the jail, and he stated that he has never been outside of the Contra Costa County jail where he is now confined. On the other hand, he did make some statements which have considerable bearing on his attitudes and incentive to escape.

He stated that when he was first brought from San Quentin and placed in the Solano County Jail as a federal prisoner he was terribly wrought up over his young wife and the place where she was staying in Berkeley. He said that if he had not gone out for those week-end visits to her and got her moved to another apartment he would have "lost her like I did my first wife when I went off to prison." He said she first had a room in an apartment house in which was another man who was becoming interested in her and she in him and possibly the only thing that stopped a breakup of their marriage was his finding another place for her to live and his week-end visits to her. When I asked him if there was not any uneasiness in his mind, since he gets out to see her no longer, he assured me that there isn't. He added that his Sunday visits with her in the privacy of the Contra Costa County jail's consultation room takes care of everything now. He hastened to add that if he lost such privilege now and had to be confined in jail under less favorable circumstances, he would just ask to be

taken back to San Quentin and refuse to go on with his testimony as a Government witness. While not at all discourteous he was very frank and positive in his statement that either his present situation had to remain undisturbed so far as place of confinement and privileges are concerned or he would back out on all his promises and testimony, and demand to be returned to San Quentin to continue his time there.

This attitude confirms the fears of Mr. Karesh and the Narcotic Agents, of course, but when I presented another angle to the matter Winkelblack had not thought of, he weakened some. I asked him if he'd ever considered the possibility of his being prosecuted by the Government for escaping jail, and probably on many counts, and also of his wife being involved as harboring an escaped federal prisoner. He said he hadn't and he showed some fear at the thought, but he hastened to say that he didn't think Mr. Karesh would do that to him. I told him that I did not know, of course, what could or would happen in the event he got stubborn, but at least there was something to think about. In fact, I am now so sure that this idea of federal prosecution on escape from jail has so changed his mind, that Mr. Karesh need have no fear whatsoever of his backing down on his testimony. Also Winkelblack seems to be sincerely in love and devoted to his wife and he would do nothing that would endanger her in the least.

Altho Winkelblack appears frank, friendly and truthful and sincere in his assurances that he has learned his lesson and lives only for the day when he can get his freedom and return to his wife and baby, he dropped another disturbing thought which the Bureau should not pass over without giving it full consideration in making decisions concerning him and his place of confinement, also his prosecution on the jail escapes.

In my letter of April 21 to Mr. Alexander, I sent along a newspaper clipping and made mention of the fact that Winkelblack had been approached with the idea of writing his life's story and an account of his breaking this "big narcotic case." I questioned him yesterday concerning this matter and what he said is or might be very alarming. He disclaimed to me any intention of publicizing his story but he did mention the possibility of such a story as being more sensational than the one which came out in the Saturday Evening Post a few weeks ago by the ex-convict who caused Waxey Gordon's downfall. Waxey Gordon, as you know, is mixed up in the Winkelblack case and an account of what happens in it would only be a sequel to the Saturday Evening Post story—so Winkelblack stated. To make it more sensational, he very boldly said, "I could put in all the details of how, as a federal prisoner, I had the privilege of leaving jail to spend the week ends with my wife!"

EXHIBIT "B"

(Copy)

San Francisco—May 20, 1952

Mr. M. E. Alexander,
Assistant Director,
Bureau of Prisons,
Washington, D. C.

Teletype Message Via Alcatraz—10:30 A.M.

Assistant U. S. Attorney Karesh still blocking confinement of Winkelblack in quarters adequately secure against escape and is demanding that his special privileges be continued. He is also insisting that I remain in San Francisco until the matter is definitely settled to his satisfaction. My work here is completed and my report was airmailed to you on May 18. It sums up the situation as I see it. I am anxious to get on to my other work but have promised Mr. Karesh that I'd delay leaving until tomorrow in order to give you time either to approve or disapprove my recommendation for more strict custody to be maintained over Winkelblack. Please let me know your decision as soon as possible.

ROY CASEY,
Inspector.

Receipt of copy acknowledged.

[Endorsed]: Filed March 11, 1954.

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR NEW TRIAL

Balestreri moves for a new trial, (Rule 33 F.R.C.P.), upon the ground that he has newly discovered evidence that the witness Harry Winkelblack testified falsely as a government witness against him, because he gave his evidence "under threats, duress and promises made against him and to him by agents of the government." The motion is supported by an affidavit of James E. Burns, the attorney who represented Balestreri at the trial. The affidavit alleges that, upon the basis of a letter, which in some unexplained manner, came into the possession of the affiant, written by a federal prison inspector to an official of the Federal Bureau of Prisons, the witness Harry Winkelblack, testified "under duress, promises and threats and his testimony was biased and prejudiced against the defendant and was knowingly induced by the various agents of the Narcotics Bureau and the Assistant United States Attorney who procured the indictment herein and instigated the prosecution against this moving defendant," by "threats, promises and favors." The prison inspector's letter, referred to, was dated May 18, 1952 and is in the nature of a report as to the conditions surrounding the imprisonment of the witness Winkelblack in the Contra Costa jail, Contra Costa County, California. The inspector, in great detail, sets forth the facts showing that proper security safeguards were not

maintained with respect to the prisoner Winkelblack and that he was allowed unusual freedom while in the jail.

The witness Winkelblack, at the time the federal grand jury was investigating the charges against the defendants in this action, was an inmate of the State Penitentiary at San Quentin, serving a sentence imposed by the State Court. For the purpose of obtaining the testimony of the witness Winkelblack before the federal grand jury, this court issued a writ of habeas corpus ad testificandum. Pursuant to the writ, the United States Marshal brought the witness from the state prison and lodged him in the Contra Costa County jail to make him available as a witness before the federal grand jury. Since the affidavit of James E. Burns is not contraverted, the court must assume and accept as correct the allegations that Winkelblack was given favored treatment and that security regulations were relaxed in his case. Winkelblack was named as a co-conspirator, but not as a defendant, in the indictment subsequently found. He testified before the grand jury several times.

After giving his testimony before the grand jury, and on June 17, 1953, the writ of habeas corpus was discharged and Winkelblack was returned to the state prison at San Quentin. Thereafter, and several months prior to Balestreri's trial, Winkelblack was released on parole from San Quentin prison by the state authorities.

Neither the affidavit, nor the exhibits, thereto substantiate in any way, Balestreri's assertion that Winkelblack's testimony at his trial was given as a result of any promises or threats upon the part of any government agent or that the so-called favorable treatment given him, while in the Contra Costa County jail, had any proximate relationship to his testimony later given at Balestreri's trial.

Moreover, even if true and reasonably related to his testimony, these facts would be no more than in the nature of impeachment. Hence they do not have the substance which would invoke the exercise of judicial discretion on motion for a new trial. *Gage v. U.S. 9 Cir. (1948) 167 F.2d 122*; *McDonnell v. U.S. D.C.C. (1946) 155 F.2d 297*; *Thompson v. U.S. D.C.C. (1950) 188 F.2d 652*; *Martin v. U.S. 6 Cir. (1946) 154 F.2d 269*.

The motion for a new trial is denied.

Dated March 19, 1954.

/s/ LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed March 19, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Mario Balestreri, Rt. 2, Box 605, Santa Clara, California.

James E. Burns, 111 Sutter Street, San Francisco, California.

Violation: Ninth Count—Jones Miller Act, 21 U.S.C. 174; Twenty-fourth Count—Conspiracy Act, 18 U.S.C. 371.

Judgment: Ninth Count—Three years; Twenty-fourth Count—Three years. Concurrent.

Order Denying Motion for a New Trial on ground of newly discovered evidence March 19, 1954.

I, the above named appellant, hereby appeal to the United States Court of Appeals for the Ninth Circuit in the above-stated order denying appellant's motion for a new trial on the ground of newly discovered evidence dated March 19, 1954, which motion was made within two years after the judgments of conviction above noted.

Dated: March 26, 1954.

/s/ JAMES E. BURNS,
Attorney for Defendant.

[Endorsed]: Filed March 26, 1954.

The United States District Court, Northern District
of California, Southern Division

No. 33192

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MARIO BALESTRERI and JOSEPH LIT-
MAN,

Defendants.

REPORTER'S TRANSCRIPT

August 17, 18, 19 and 20.

Before: Hon. Louis E. Goodman, Judge.

Appearances:

For the Government:

LLOYD H. BURKE, ESQ.,

United States Attorney, by

JOHN RIORDAN, ESQ., and

RICHARD FOSTER, ESQ.,

Asst. U. S. Attorneys.

For the Defendants:

JAMES E. BURNS, ESQ.

Monday, August 17, 1953—10:00 O'clock A.M.

The Clerk: United States versus Mario Balestreri and Joseph Littman, jury trial.

Mr. Riordan: The United States is ready.

Mr. Burns: Ready.

(Whereupon a jury was selected and sworn.)

Tuesday, August 18, 1953—10:00 o'Clock A.M.

HARRY WINKELBLACK

a witness called on behalf of the Government, being first duly sworn to tell the truth the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name to the Court and jury.

A. Harry Winkelblack.

Direct Examination

By Mr. Riordan:

Q. Mr. Winkelblack, where do you reside?

A. In Berkeley.

Q. California? A. Yes, sir.

Q. You are named in this indictment as a co-conspirator, is that correct? [3*] A. Yes.

Q. Have you used other names?

A. Yes, sir. I used the name Wink and Paul Adams and Al Green.

Q. And have you had prior convictions and jail sentences? A. Yes, sir.

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Testimony of Harry Winkelblack.)

Q. What was the date of your first conviction?

A. January, 1942.

Q. And what was that for?

A. That was for burglary in Illinois.

Q. Burglary in Illinois. Did you serve a jail sentence for that?

A. I served a penitentiary sentence.

Q. How long did you serve?

A. I was released in approximately two years and then was tried by the federal authorities in 1944 on a mail theft charge. I was sentenced to Leavenworth in October, 1944.

Q. Were you arrested by the California Narcotic authorities for narcotic violations?

A. Yes, sir.

Q. Where were you arrested?

A. At San Leandro, California, on March 23rd, 1951.

Q. Did you receive a sentence from the Alameda County Superior Court for that arrest?

A. Yes, sir. [4]

Q. What was the arrest for?

A. Transportation of narcotics.

Q. And what was your sentence by the Alameda County Superior Court? A. One to ten.

Q. And the date of that arrest was what?

A. March 23rd, 1951.

Q. At San Leandro, California?

A. Right.

Q. Now, were you also sentenced by the San Mateo County Superior Court? A. Yes, sir.

(Testimony of Harry Winkelblack.)

Q. And the alleged date of the offense of that sentence was what? A. March 23rd.

Q. The same date as the San Leandro?

A. Yes, sir.

Q. And what was the charge for?

A. Possession of narcotics in my residence.

Q. Possession of narcotics in your residence?

A. Yes.

Q. And your residence at that time was——

A. Burlingame, California.

Q. What sentence did you receive from the Superior Court of San Mateo County? [5]

A. Another one to ten consecutive to the one to ten from Alameda County.

Q. Are you presently paroled from the State of California? A. Yes sir.

Q. Were you ever a member of the armed forces?

A. Yes, sir.

Q. Did you receive a discharge?

A. Yes, sir.

Q. On what grounds?

A. Conviction by a civil court.

Q. That is for the same sentence we are talking about, is that correct? A. Yes, sir.

Q. What type of education did you have, Mr. Winkelblack?

A. I had three years university.

Q. Did you graduate from high school?

A. Yes, sir.

Q. Did you receive a college degree or diploma?

A. No, I did not.

(Testimony of Harry Winkelblack.)

Q. Why did you leave school?

A. I had to go to work. I didn't have the money to finish.

Q. Didn't have any money to finish?

A. No, sir.

Q. Are you married, Mr. Winkelblack?

A. Yes, sir. [6]

Q. How long ago did you marry?

A. About three years.

Q. Three years ago? Are you living with your wife presently?

A. Yes, sir.

Q. Do you have any children?

A. Yes, I have. I have a son, two years old.

Q. Two years old? Was your son born when you were in California State prison?

A. Yes, he was.

Q. And you and your wife and child live together now, is that correct?

A. Yes, sir.

Q. Now, when you were arrested by the California State authorities in San Leandro did you employ an attorney?

A. No, sir, I did not.

Q. Did you have an attorney represent you?

A. Yes, sir.

Q. What was his name?

A. I had two. Mr. Golden—Ted Golden, I believe it was, and Bruce Fratis from Alameda County.

Q. Who made the arrangements for their employment?

Mr. Burns: I don't know what materiality this has. He has testified he had an attorney.

(Testimony of Harry Winkelblack.)

Mr. Riordan: He said he didn't employ one but he had one. That was his testimony. [7]

Mr. Burns: It is incompetent, irrelevant and immaterial, and hearsay as to these defendants.

Mr. Riordan: There is going to be a co-conspirator.

The Court: I will overrule the objection.

Mr. Burns: You don't mean to say he is a co-conspirator on the State charge in reference to these people, do you?

Q. (By Mr. Riordan): Do you know Abe Chapman?
A. Yes, sir.

Q. When did you first meet Mr. Chapman?

A. In 1944 when I went to Leavenworth Penitentiary.

Q. You met him in the penitentiary?

A. Yes, sir.

Q. And when did you next see Mr. Chapman after the penitentiary?

A. In October, 1950, in San Mateo.

Q. Then did you work for Mr. Chapman?

A. Yes, sir.

Q. What type work did you do?

A. I delivered narcotics.

Q. Delivered narcotics? Did he pay you for your work?
A. Yes, sir.

Q. What was the basis of pay?

A. Usually \$50.00 for each delivery.

Q. \$50.00 for each delivery? Did you collect money for Mr. Chapman on some of these deliveries?
A. Yes, sir. [8]

(Testimony of Harry Winkelblack.)

Q. The deliveries we are speaking of are narcotics? A. Yes.

Q. Did any of the narcotics you delivered for Mr. Chapman have any type of stamp tax of any kind or nature? A. No, sir, they did not.

Q. Do you know Evan Rogers?

A. Yes, sir.

Q. How did you meet Evan Rogers?

Mr. Burns: May the record show that we object to this testimony on behalf of these two defendants on the ground that there is no connection between them.

The Court: Same ruling.

Q. (By Mr. Riordan): How did you meet Evan Rogers? A. Through Mr. Chapman.

Q. When did you first meet him?

A. Just before Christmas, 1950.

Q. Did you sell any narcotics to Rogers?

A. Yes, sir.

Q. About how much?

A. Approximately a kilo and a half.

Q. How much is a kilo?

A. Two and two-tenths pounds.

Q. These narcotics belonged to who?

A. Abe Chapman.

Q. Abe Chapman? And did you, yourself, receive any money [9] from Rogers for the delivery of these? A. No, sir.

Q. Do you know Edward Sahati?

A. Yes, sir.

Q. When did you meet Ed Sahati?

(Testimony of Harry Winkelblack.)

A. Through Mr. Chapman.

Q. When did you meet Ed Sahati?

A. In January, 1951.

Q. Did you have narcotics dealings with Mr. Sahati? A. Yes, I did.

Q. Did you sell him narcotics?

A. Yes, sir.

Q. And the narcotics belonged to——

A. Mr. Chapman.

Q. Did you receive any money from Mr. Sahati?

A. Yes, sir.

Q. Approximately how much?

A. Approximately \$10,000.00.

Q. Do you know a Woody Zaine?

A. Yes, sir.

Q. Did you have narcotics dealings with him?

A. Yes, sir.

Q. Did you sell him narcotics?

A. Yes, sir.

Q. Were they Chapman's narcotics? [10]

A. Yes.

Q. Did you receive money from Mr. Zaine?

A. Yes, I did.

Q. Approximately how much?

A. Well, this is all in the same money with Sahati.

Q. The same as with Sahati? A. Yes, sir.

Q. In other words, the Sahati and Zaine shells were joint sales?

A. That is correct. Mr. Zaine usually came after the narcotics for Mr. Sahati. They lived together.

(Testimony of Harry Winkelblack.)

Q. Do you know John Phelps?

A. Yes, sir.

Q. Did you have narcotic dealings with him?

A. Yes, I did.

Q. Did you sell narcotics to him?

A. Yes, sir.

Q. Approximately how much?

A. Approximately ten or fifteen ounces.

Q. Did you receive any money from Phelps?

A. Yes, I did.

Q. Approximately how much?

A. Oh, approximately \$5,000.00.

Q. And those narcotics belonged to Chapman, I think you testified? [11]

A. Yes, sir.

Q. Do you know a John Durand?

A. Yes, sir.

Q. Did you have any narcotic dealings with him?

A. Yes, I did.

Q. About how much did you sell him?

A. Around ten ounces, as I recall.

Q. How much money did you receive?

A. About five thousand.

Q. Do you know a Joseph Palm?

A. Yes, sir.

Q. Did you have any narcotics dealings with him?

A. No, sir.

Q. How did you meet Joseph Palm?

A. Through Mr. Chapman.

Q. Where did you meet him?

A. At Bones' Corner in San Francisco.

Q. Is that Bones Remmer?

(Testimony of Harry Winkelblack.)

A. Yes. Taylor and Eddy Streets.

Q. How many times did you meet him?

A. Two times.

Q. What was the purpose of that meeting?

Mr. Burns: I object to the question as being incompetent, irrelevant and immaterial; calling for the conclusion and opinion of this witness. He said he didn't sell him any [12] narcotics.

The Court: Well, the form of the question is objectionable, as to the purpose.

Q. (By Mr. Riordan): Do you know Joseph Olivero? A. I never met him, no sir.

Q. Do you know him as Joe Oliver?

A. Yes.

Q. Did you have any narcotics dealings with him? A. Yes.

Q. What were those dealings?

A. Received one package. I wrote a letter to Mr. Oliver for Mr. Chapman and received a package from the same person from Kansas City.

Q. Approximately how much did you receive?

A. Half a kilo.

Q. Do you know Michael DePinto?

A. Yes, sir.

Q. Did you have any narcotics dealings with him? A. Yes, sir.

Q. Do you know Harry Weimer?

A. Yes, sir.

Q. Did you have any narcotics dealings with him? A. Yes, I did.

Q. Same type as these others you referred to.

(Testimony of Harry Winkelblack.)

A. Yes, sir. [13]

Q. Do you know Donald Meyer?

A. Yes, sir.

Q. Did you have narcotics dealings with him?

A. Yes, I did.

Q. These dealings were all—the narcotics that were transferred belonged to Chapman, is that correct?

A. That is right.

Q. Do you know Mario Balestreri, the defendant?

A. I haven't ever met him, no, sir.

Q. Have you ever seen him?

A. Yes.

Q. About how many occasions?

A. Five or six times.

Q. If you saw him again would you know him?

A. Yes.

Q. Do you see him in this Court room?

A. Yes, that is him over at the table.

Q. Point him out to the jury.

A. Next to the attorney that was standing up.

Mr. Riordan: Let the record show that the witness identifies the defendant, Mario Balestreri.

The Court: Very well.

Q. (By Mr. Riordan): When did you first see the defendant, Mario Balestreri?

A. On February 1st, 1951. [14]

Q. Was anyone with you when you saw him?

A. Mr. Chapman.

Q. What was the occasion of that?

A. Mr. Chapman went to San Jose to find Mr. Balestreri and stopped at Tom's bar on First Ave-

(Testimony of Harry Winkelblack.)

nue there in San Jose, and he wasn't able to locate him there. I was driving the car. Then he had me drive to a residence in San Jose. His car wasn't there.

Then he had me drive him to a farm near San Jose and I let Mr. Chapman out at this place. He went in and was in the house for ten or fifteen minutes, came out. The two men came out on the porch and I stayed in the car and I wasn't introduced to him nor had no conversation with Mr. Balestreri, but when Chapman entered the car he said——

Mr. Burns: Pardon me. I object to any conversation between this witness and Mr. Chapman in the absence of the defendant.

Q. (By Mr. Riordan): Did you hear any conversation when they came out of the house between Mr. Balestreri and Mr. Chapman?

A. The only conversation I heard was when Mr. Chapman left he said he would see him.

Mr. Burns: Pardon me, is this a conversation you heard Mr. Chapman have with Mr. Balestreri?

The Witness: Yes.

The Court: Objection overruled. [15]

The Witness: ——said to Mr. Balestreri he would see him the next day and pick it up.

Q. (By Mr. Riordan): "Pick it up"?

A. That is all.

Q. Do you know whether Mr. Chapman saw Mr. Balestreri next day? A. Yes, sir.

Q. Where did that take place?

(Testimony of Harry Winkelblack.)

A. Near a Chinese supermarket on 4th street in San Jose.

Q. What time of day was this?

A. This was in the afternoon, I imagine around two o'clock.

Q. And what did you observe on that day?

A. I was instructed to park in this parking lot at the Chinese supermarket and to go inside the supermarket and wait until Chapman gave me a sign to come out. So I drove to this place with Mr. Chapman. I entered the supermarket and where I could look out of the window from the counter, and Mr. Chapman waited near the front, near the telephone booth.

A car pulled up to the curb and Mr. Chapman got in. He was only gone two or three minutes, stepped out of the car and motioned to me as he came by and I went directly to the car.

Q. That is, to your own car? A. Yes.

Q. Go ahead.

A. When I got in the car Mr. Chapman took a small sack from [16] his pocket and set it on the floor of the car between us and told me to drive back to Burlingame. So I let Mr. Chapman out near his car on 29th Street and El Camino in San Mateo. I took the package home to my home in Burlingame, opened it, and it did contain narcotics, five ounces of heroin.

Q. Let's go back. When Mr. Chapman told you to go in the store, you said a car drove up and

(Testimony of Harry Winkelblack.)

Chapman got in. Do you know whose car he got into, that car you speak of that drove up?

A. I don't know whose car it was, no.

Q. Who was driving the car?

A. Mr. Balestreri.

Q. You say the car returned again?

A. Yes. Apparently went right around the block.

Q. In how long did it return?

A. About three or four minutes, I would judge.

Q. Did you see the car come back?

A. Yes, sir.

Q. Who was driving the car?

A. Balestreri.

Q. And it stopped in front of the supermarket where you could see it? A. Yes.

Q. And Chapman got out of the car?

A. Yes, sir.

Q. He motioned to you to come? [17]

A. To return to the car.

Q. Then Mr. Chapman set a package down?

A. On the floor of the car.

Q. On the floor of the car?

A. Between us, yes, sir.

Q. That is, in the front seat? A. Yes, sir.

Q. Floor of the front part of the car?

A. Yes.

Q. And you took the package to your residence in Burlingame? A. Yes.

Q. Opened it? A. Yes.

Q. And it contained what?

A. Contained five ounces of heroin.

(Testimony of Harry Winkelblack.)

Q. When is the next time that you saw Mr. Balestreri?

A. It was on Washington's Birthday, February 22nd, 1951.

Q. And when and where was that?

A. Well, I drove Mr. Chapman to a filling station—I don't recall what it was—in Redwood City, on Bayshore.

Q. Bayshore highway in Redwood City?

A. Yes, sir. I don't know what the side street was. I parked on the side street right by the station, and Chapman got out, and he asked me if I had a newspaper in the car, took the newspaper with him and went to the rest room in this filling [18] station. He waited out in front of the rest room, and we were there for quite a while waiting, and he used the telephone there.

Q. Who used the telephone?

A. Mr. Chapman.

Q. Did you see him use it?

A. I could see him in the booth, yes, sir. I was parked right alongside a ditch on this side street.

After waiting about thirty minutes a man came walking toward my car on this side street, and he walked within three or four feet of my car, and Mr. Balestreri walked by and Chapman——

Q. That was the defendant, Mario Balestreri?

A. Yes.

Q. Go ahead.

A. Chapman saw him coming, so he went in the rest room and Mr. Balestreri walked in right be-

(Testimony of Harry Winkelblack.)

hind him, and Chapman came out first, returned to the car, and he had a newspaper in his hand and he had a small package inside it, and he put it on the floor of the car again and we returned to Burlingame.

Q. You took the package back to Burlingame?

A. Yes.

Q. Whereabouts in Burlingame?

A. To my apartment.

Q. Did you open the package?

A. Yes. [19]

Q. What did it contain?

A. I think it was three ounces of heroin.

Q. When is the next time you saw the defendant, Mario Balestreri?

A. I believe it was a couple of days later, because we were expecting a shipment from New York on the 22nd and it hadn't arrived, and for that reason he went to San Jose.

Mr. Burns: I will move that be stricken, that "we were expecting * * * and for that reason," as being a conclusion and opinion of this witness.

The Court: Very well, it may go out.

Q. (By Mr. Riordan): Continue.

A. The package hadn't arrived from New York that we expected.

Mr. Burns: May I ask the Court to admonish the witness?

Q. (By Mr. Riordan): Just continue from there, Mr. Winkelblack. After that what did you do?

The Court: Just state what you did.

(Testimony of Harry Winkelblack.)

Q. (By Mr. Riordan): Just state what you did. I asked you, when is the next time you saw Mr. Balestreri? A. Approximately two days later.

Q. After Washington's Birthday?

A. Yes, about the 25th of February.

Q. All right.

A. We received a package from the east, and I took three ounces from this package and was instructed to meet Mr. [20] Balestreri near the Ben Franklin's Hotel in San Mateo as he wanted to return the three ounces that he had borrowed from Mr. Balestreri.

Q. You say you took it from a package you received from the east? A. Yes.

Q. From whom was that package received?

A. It was from Waxey Gordon, but I had written to Joe Littman for the package.

Q. At this time you are speaking of, about February 25th, did you see Mr. Chapman return the package to the defendant, Mario Balestreri?

A. Yes, I did.

Q. And that was where?

A. Between 3rd and 4th in San Mateo, back of the Ben Franklin Hotel.

Q. In back of the Ben Franklin Hotel?

A. Yes, sir.

Q. And how much narcotics were in the package? A. Three ounces.

Q. How do you know there were three ounces?

A. I put it there. I kept all the narcotics.

(Testimony of Harry Winkelblack.)

Q. You kept all the narcotics for the benefit of Mr. Chapman? A. Yes.

Q. And you would fill the orders? [21]

A. Yes.

Q. And then when was the next time that you saw the defendant, Mario Balestreri?

A. Around the first of March. I don't recall the exact date.

Q. Where?

A. In San Jose near this same Tom's Bar on First Avenue. I recall that because at the same time I picked up a set of scales that Mr. Chapman said belonged to Balestreri, he gave them to him.

Q. I show you a set of scales from Plaintiff's Exhibit 8 and ask you if you can identify these?

A. Looks exactly like the kind of set we picked up in San Jose. I couldn't say if this is the same scales.

Q. When you picked up those scales in—when was that, Mr. Winkelblack? Around March 1st, 1951, in San Jose? A. Yes.

Q. What did you do with those scales?

A. I took them to my apartment in Burlingame and kept them.

Q. You always kept them in your apartment?

A. Yes, sir.

Q. All right, what did you use these scales for?

A. We didn't use them after all. We got them to weigh heroin with them, but we always just measured it anyway, so we tested the scale against the measuring to see if it measured out about the

(Testimony of Harry Winkelblack.)

same, and it did and we didn't bother with it. [22]

Q. But you got those scales from the defendant, Balestreri?

Mr. Burns: Pardon me—

The Court: No, he didn't say that.

Mr. Burns: That is not the evidence, and he didn't say that.

Q. (By Mr. Riordan): Who did you get the scales from?

A. Got the scales in San Jose. Mr. Chapman told me he got them from Balestreri.

Mr. Burns: I move what Mr. Chapman told him be stricken.

The Court: That may go out for the time being.

Mr. Riordan: Stipulated.

Q. (By Mr. Riordan): Well, now, tell us what took place when you and Chapman went to San Jose?

A. The real purpose—

Mr. Burns: Pardon me. Again may I ask the Court to admonish the witness not to give us conclusions?

The Court: Yes, just state what happened.

Q. (By Mr. Riordan): You and Mr. Chapman went down to San Jose? You named some place approximately around First Street in San Jose?

A. Tom's bar on First Avenue, between First and Second Avenues that I was parked, and again we bought three or four ounces of heroin.

Q. Where did you get the three or four ounces of heroin from?

A. Mr. Balestreri. He drove up directly across

(Testimony of Harry Winkelblack.)

from where I [23] was parked. Mr. Chapman walked from my car across the street, was handed a package, returned directly to my car, and put it in the usual place on the floor and I took it back to Burlingame.

Q. Now, did you see Mr. Balestreri again after this?

A. I saw him on March the 15th, income tax day.

Q. Where did you see him then?

A. At this same Chinese supermarket near 4th Avenue in San Jose.

Q. Tell us what you observed and did there?

A. On this particular day I drove Mr. Chapman to San Jose, and we were to pick up a package, and on the way he stopped at Levine's Jewelry Store in San Jose, which is also on First Street, and he picked up a diamond ring at this jewelry store to show a friend of his in San Mateo.

And I took him from there to this same Supermarket and the same thing occurred. I went inside. Mr. Chapman waited outside, got in the car when it pulled up of Mr. Balestreri. He rode around the block, came back, had the package with him, and he motioned for me to come out.

As we started to drive away he felt in his pocket and he couldn't find this diamond ring he had just bought. And it was in a box inside a little sack. So he became quite excited, and he moved the car seat out and everything, looking for the ring, and he had me let him out a couple of blocks away

(Testimony of Harry Winkelblack.)

and he called [24] a cab and went to look for the ring. He thought he had left it in Balestreri's car, and he told me to stay there——

Mr. Burns: I will object that what Mr. Chapman thought, as testified by this witness, is a conclusion impossible for him to draw, and I would ask that it be stricken.

The Court: That part of the answer may go out.

Q. (By Mr. Riordan): Then what took place next, Mr. Winkelblack?

A. He told me to wait at 'Tiny's Drive-in in San Jose until he got there, and he came back and said he had contacted Mr. Balestreri but the ring wasn't in his car, and that he had gone back to the jewelry store and told Mr. Levine that he had lost the ring, and asked me to put an ad in the paper, which I did, the San Jose Paper, a couple of days later.

Q. After Mr. Balestreri came back the second time to the market, which was near to three to five minutes after he left with Abe Chapman, when the car returned, did you notice who was driving the car? A. The same person. Mr. Balestreri.

Q. Mr. Balestreri? A. Yes.

Q. Did you see Chapman get out of the car?

A. Yes.

Q. Did he have anything in his hands?

A. No, he didn't. [25]

Q. Then what happened right after that?

A. He returned to our car and put the package

(Testimony of Harry Winkelblack.)

on the floor, and as he took the package out, that is when he missed this ring.

Q. Did the package remain on the floor?

A. Yes.

Q. The package remained on the floor for how long?

A. I kept it on the floor—when I waited at Tiny's I put the package back under the seat and sat there at the counter at Tiny's, then drove back to Burlingame with Mr. Chapman, came back and took the narcotics to my apartment in Burlingame.

Q. Did the package contain narcotics?

A. Yes.

Q. You looked? A. Yes.

The Court: We will take the morning recess. Please bear in mind the admonition of the Court not to talk about the case.

(Short recess)

Q. (By Mr. Riordan): Now, Mr. Winkelblack, referring to the meeting that you witnessed between Chapman and defendant, Mario Balestreri, on March 15th when the package was on the floor of your car, you returned it to your home, is that right? A. Yes.

Q. Did you open the package?

A. Yes, sir. [26]

Q. What did it contain? A. Heroin.

Q. Do you know the approximate amount?

A. Either three or five ounces.

Q. When was the next time that you saw defendant, Mario Balestreri?

(Testimony of Harry Winkelblack.)

A. On the morning of the date of my arrest, March 21st.

Q. And where did you see him?

A. At San Mateo near the Williams Store, around 35th and El Camino.

Q. In the City of San Mateo? A. Yes.

Q. In the State of California? A. Yes.

Q. What did you observe at that time? Just a moment. Was Mr. Chapman with you at that time? A. Yes, sir, he was.

Q. Was he in your automobile?

A. No, he wasn't. He rode there with me.

Q. Then what happened?

A. I parked in the parking lot near the Andy Williams Store, and we waited there for quite some time. So I finally drove a block away in my car and Chapman waited near the Andrew Williams Store, and Mr. Balestreri drove up.

He walked approximately a block this same morning with [27] Chapman, and Chapman met me back at my car with the package which contained ten ounces of heroin, and I returned to my home in Burlingame.

I had about seven ounces of heroin in my home already and we had a sale for fifteen ounces that day and that was the reason he had to buy an additional ten ounces to mix with the seven ounces which were from Mr. Littman.

Mr. Burns: Pardon me, I didn't get that portion of the witness' answer.

The Court: Read the answer.

(Testimony of Harry Winkelblack.)

The Witness: I had written——

Mr. Burns: Pardon me. Will you read the answer.

(Answer read by the reporter.)

Q. (By Mr. Riordan): Mr. Winkelblack, I will show you Plaintiff's Exhibit 7, for identification. Do you recognize that?

A. Looks like the two packages that were in my residence.

Q. On the day of your arrest? A. Yes, sir.

Q. Are these the two packages you were charged with the crime for in San Mateo Superior Court?

A. Yes, sir.

Q. And what was your testimony, or did you testify as to the approximate weight?

A. Yes, I did. Approximately twelve or eighteen ounces was [28] in my house. I had fifteen ounces already measured out that I had measured in two packages, ten ounces I picked up that morning, mixed with the five ounces that I already had in my house that we had received from Littman earlier.

Q. Do you know the defendant, Joseph Littman? A. No, sir, I do not.

Q. Did you ever have any correspondence with the defendant, Joseph Littman? A. Yes, sir.

Q. What type of correspondence did you have?

A. On January the 1st or 2nd, 1951, Mr. Chapman asked me if it would be all right if he had a

(Testimony of Harry Winkelblack.)

package sent to my home, and if my wife was home all the time, he asked if I would have the package mailed to her, and I told him it would be all right.

So he had me write a letter to Joseph Littman. I don't recall the address in Patterson, New Jersey. He instructed him to send the package that had been agreed on by phone to Mrs. Rosemary Wink, 706 Peninsula, in Burlingame, my home address.

This was on January 2nd, I believe. On January 6th, we moved from the peninsula address to Highland Avenue in Burlingame, and therefore weren't at home to receive the package, so we asked this lady who lived in the same apartment house to sign for the package if it came as it would come by registered mail, which she did. When she received the package, she phoned [29] us at our apartment and I drove to her home and picked up the package, took it to my apartment and opened it, and it contained a kilo of heroin.

Q. And that was received as a result of your sending a letter to Joseph Littman in Patterson, New Jersey, on January 2nd, 1951?

A. Yes, sir.

Q. Did you ever send any money for this heroin to Joseph Littman? A. Yes, sir.

Q. Will you explain the details of your paying for this one kilo of heroin?

A. We went sometimes to Siegel's store in Oakland, California on Broadway; and on another occasion I recall I went to Bixley's Clothing Store, 4th Avenue, in San Mateo.

(Testimony of Harry Winkelblack.)

We would buy two or three Jackman's shirts each time and put the money in \$100.00 bills between the shirts, and I would wrap the package just roughly, and then Mr. Chapman would take the package to a stationery store and have it rewrapped and mailed to Mr. Littman in Patterson, New Jersey. I usually made out the label for him myself.

Q. You usually made out the label yourself?

A. Yes, sir.

Q. And it was a package with the shirts with the money inside of it addressed to Joseph Littman, Patterson, New Jersey? [30]

A. Yes.

Q. Approximately how much would you send to Joseph Littman by this method in payment of the one kilo of heroin, for instance?

A. He didn't pay it off all at once. He would send five to ten thousand dollars cash at a time, because he paid him ten thousand for each kilo.

Q. Would he pay it off as he sold some of it, is that it?

A. Yes.

Q. In other words, it was a consignment arrangement?

A. Right.

Q. On any other occasion that you recall did you carry out this type of arrangement between Chapman and Joseph Littman?

A. Yes. I wrote to Mr. Littman again on February 13th. I recall this date because I was at the airport, United Airlines Airport, in South San Francisco, at the same time Mr. Chapman was at the airport going to Seattle—I was going to Reno—and he had me get a card from the card counter

(Testimony of Harry Winkelblack.)

at the airport and write on this card to Mr. Littman asking him to send another Kilo, and this time I gave him the address of a friend in San Leandro.

Q. Do you remember the friend's name?

A. It was a friend of my wife's and at this time—It was sent to this address in San Leandro. I put in the card to mail to Mrs. Rosemary Wink, c/o Mrs. Eva Lewis at this house [31] in San Leandro.

Q. What was the relationship between your wife and Mrs. Eva Lewis?

A. They had worked together in a restaurant in Oakland. In fact, they had a restaurant between them on a consignment basis in Oakland at one time.

Q. Did you ever receive the package that you requested of Joseph Littman?

A. Yes, sir. This package was received on February the 23rd, I believe, the day after Washington's Birthday.

Q. And what did the package contain?

A. The package contained one kilo of heroin.

Q. And that is what you requested in this letter you refer to on February 13, 1951, that you mailed to Joseph Littman in Patterson, New Jersey?

A. Yes, sir.

Q. Did you have any other such dealings?

A. Yes. I wrote to him again about the 15th or 16th of March and asked for a kilo of heroin and three ounces of cocaine, and this was the package I was eventually arrested with.

(Testimony of Harry Winkelblack.)

Q. Where did you ask the package to be mailed?

A. I asked it to be mailed to the same place, Mrs. Eva Lewis, in care of—I forget the last name, on Riva Street in San Leandro, California, to Mrs. Rosemary Wink.

Q. That is the date you say you were [32] arrested? A. Yes, sir.

Q. Did you go to Mrs. Lewis' house in San Leandro to pick up the package? A. Yes.

Q. How did you know the package was there?

A. I instructed her a couple of days before that to call me when the package came in, and on March 23rd about noon she called our home and told my wife to tell me the package was there, and we drove over to San Leandro.

This was Good Friday, March 23rd, 1951. And we entered her home and she came out with the package from her bedroom. It was still wrapped. And I put the package on the davenport and we talked for a few minutes, walked out of the house with the package and drove approximately two blocks before the narcotic agents flagged us, flagged our car, and arrested us.

Q. When they arrested you did you have the package in your possession?

A. I had the package on the floor of the car, and they took the package and told me what it contained.

Q. At the time you were arrested did you tell the agents where they could find any narcotics?

(Testimony of Harry Winkelblack.)

A. Yes.

Q. What did you tell them?

A. I told them there was approximately half a kilo in my apartment in Burlingame in the china closet. [33]

Q. That was the half kilo, the seventeen and one-half ounces you referred to when you identified Plaintiff's Exhibit 7, in evidence for identification?

A. Yes, sir.

Mr. Riordan: Now, your Honor, I believe the foundation has been laid. Can I go into declarations now?

I think there is evidence sufficient?

The Court: You mean from this witness you wish to ask conversations?

Mr. Riordan: Yes.

Mr. Burns: I don't understand this witness to have ever had a conversation with either of these defendants.

Mr. Riordan: It isn't necessary.

The Court: It isn't necessary. I think you had better ask the questions you have in mind and give counsel an opportunity to object and I will rule on them.

Q. (By Mr. Riordan): Going back to February 1st, 1951, you testified that you and Mr. Chapman, Abe Chapman, took a trip down to San Jose. Mr. Chapman made a statement to you——

Mr. Burns: I object to leading and suggestive questions on the part of the prosecuting attorney.

(Testimony of Harry Winkelblack.)

If he is going to ask about conversations, he should fix the time and place and persons present.

Mr. Riordan: I just did that.

Mr. Burns: You asked if Mr. Chapman said such and such. [34]

The Court: He hadn't said that yet.

Mr. Burns: I was anticipating that he would.

Mr. Riordan: Do you want the question read again?

The Court: Read what Mr. Riordan said to the witness.

(Whereupon statement of Mr. Riordan was read by the Reporter.)

The Court: You want to elicit a conversation he had with Chapman on that occasion?

Mr. Riordan: Yes. We laid a foundation what they were going for.

The Court: Do you want to ask him what was said?

Q. (By Mr. Riordan): What was said?

The Court: Do you object?

Mr. Burns: The original objection was that it is incompetent, irrelevant and immaterial. Likewise, the form of the question is leading and suggestive. Did he have a conversation with Mr. Chapman would be proper.

The Court: That is what he has now asked him, if he had a conversation with him at that time. I suppose your next question is going to be what the conversation was?

(Testimony of Harry Winkelblack.)

Mr. Riordan: Yes, your Honor.

The Court: So the record would be clear, you should have an opportunity to object.

Mr. Burns: When he asks the question, "What was the conversation," we will make our [35] objection.

The Court: Go ahead.

Q. (By Mr. Riordan): Did you have a conversation with Mr. Chapman on the way to San Jose, referring to the date February 1, 1951?

A. Yes, sir.

Q. You and Mr. Chapman were together in an automobile?

A. That is right.

Q. And you were driving?

A. Yes, sir.

Q. What was the conversation?

Mr. Burns: On behalf of both defendants we will object as incompetent, irrelevant and immaterial.

Mr. Riordan: Declarations of—

The Court (Interposing): I am inclined to think that at the present time there is sufficient evidence for introduction of this evidence. It goes to the weight, not admissibility. I will overrule the objection. You may state the conversation.

A. On February 1st—this was in the evening—Mr. Chapman asked me to drive him to San Jose, and he told me that he was going to see Mr. Bales-treri to try to make a small purchase of three or five ounces of heroin as he was short from our regular source and needed a little bit more to fill an

(Testimony of Harry Winkelblack.)

order, so I drove him to the places I mentioned previously.

Q. (By Mr. Riordan): Now, referring to the testimony you [36] have given regarding the evening of February 2nd, 1951, and your trip to San Jose to the Chinese Supermarket, were you and Mr. Chapman in the same automobile driving to San Jose? A. Yes.

Q. Did you have any conversations at this time?

A. Yes, sir.

Q. What were the conversations?

Mr. Burns: Same objection.

The Court: Same ruling.

A. He had informed me the night before, after he left Mr. Balestreri, that he was to meet him the following day and pick up the package of heroin, and I followed out his instructions at the Supermarket and picked up the package.

Q. After this package was picked up on February 2nd, 1951, and you and Mr. Chapman got in your automobile, was there any conversation then after the pick-up?

Mr. Burns: Same objection.

The Court: Same ruling.

A. The only conversation was that he had paid him \$350 an ounce for this heroin and he was wondering if it was going to be strong enough to cut with the cutting agent we used so that he could make any profit on the deal.

Q. (By Mr. Riordan): Now, Mr. Winkelblack, I will show the contents of Plaintiff's Exhibit 8,

(Testimony of Harry Winkelblack.)

for identification. Can [37] you identify these blue and white cans marked "milk sugar"?

A. Yes, sir. I use milk and sugar to dilute the heroin with. I had three or four cans. Maybe some of them were empty, but I had at least two full cans in my apartment.

Q. These are used to dilute heroin?

A. Yes.

Q. This blue package in Plaintiff's Exhibit 8, for identification, do you know what that contains?

A. Right off——

Q. Well, open it.

A. I am not sure if it is weights for the scales or what it is.

Q. All right. A. I don't remember.

Q. The other contents of this box, can you identify for the Court, please? Will you look in the box and identify the other objects?

A. Well, I had several cellophane bags that, after I had diluted the heroin, I measured it out for whatever sale we had. If it was for five ounces, I would put five ounces in one of these small cellophane bags.

Q. Where did you do that?

A. In my apartment, on the kitchen table.

Q. Who would be present?

A. Sometimes Mr. Chapman. Ordinarily by myself. [38]

Q. How would the arrangement be made by Mr. Chapman in giving you orders for those?

A. Mr. Chapman would have me meet him at

(Testimony of Harry Winkelblack.)

Uncle Tom's, and he would tell me he had a sale for whatever amount he had, ask me to go home and put that amount in one of the cellophane bags and instruct me where to deliver it to.

Q. Tell me, was your wife ever present when you were doing this?

A. No, she wasn't. My wife was working part-time then.

Q. Can you tell us what some of the other objects are in Plaintiff's Exhibit 8 for identification?

A. Well, I have a spoon here to measure it with. And if we had a larger order, ten or fifteen ounces, I would have a cellophane bag inside one of these large brown envelopes so that if it came open you wouldn't lose it.

And I ran out of cellophane bags one night, and no stores were open, and I remember borrowing these from Langendorf's Hot Dog Stand to put heroin in.

I think that is about all that is in there except wrapping paper.

Q. Do you recognize the box?

A. No, I don't.

Q. These items you have just identified were seized from you about March 23rd, 1951?

A. Yes. [39]

Q. Now, at the time you drove Mr. Chapman down to the gasoline station on Bayshore Highway in Redwood City, did you have any conversation on that automobile trip with Mr. Chapman?

A. Yes, sir.

(Testimony of Harry Winkelblack.)

Q. What was the conversation?

Mr. Burns: Same objection.

The Court: Same ruling.

A. He told me that he was to meet Mr. Balestreri at this filling station, for me to wait on the side road, and as soon as he arrived he would come to my car, and that was the general conversation.

Q. (By Mr. Riordan): Then after Mr. Chapman came out of the rest room, I think you testified—

A. Yes, sir.

Q. —and got in your automobile; was there any conversation after that?

A. None except, "let's get back to Burlingame." He had an appointment some place.

Q. You testified to driving Mr. Chapman on March 15, 1951, down to San Jose, to a jewelry store and then the Chinese Supermarket. On the trip down was there any conversation between you and Mr. Chapman?

A. Yes.

Q. What was that conversation?

A. Well, he told me that he was to pick up this package [40] from Mr. Balestreri, but first he wanted to go to this jewelry store of Mr. Levin's as a friend of his wanted to buy a diamond ring and he was going to pick up the ring to show the party after we returned to San Mateo.

Q. All right. After you and Mr. Chapman got back in the automobile on this date at the Chinese Supermarket, were there any conversations?

A. Well, we didn't talk long. As soon as he missed the ring he was quite perturbed about the

(Testimony of Harry Winkelblack.)

fact that he had misplaced the ring. After going through his pockets several times, I only drove a couple of blocks and let him out to take a cab and meet him at Tiny's, but I kept the package of heroin with me all that time that he had picked up.

Q. Was there any conversation concerning the package that was picked up between you and Mr. Chapman at this time?

A. Well, he explained to me what to do with the package when I got it home, as we had some other heroin in the house and he was telling me what amounts to put in different places.

Q. Did he say anything about paying any money to Mr. Balestreri?

A. He did tell me if he had to pay cash or if he was making a trade arrangement.

Q. Or if he received money from Mr. Balestreri for sales to him? A. Yes.

Q. And these narcotics that you delivered, or that you and [41] Chapman delivered to Mr. Balestreri, where did you or Mr. Chapman obtain these narcotics?

A. In most cases from the orders that I had received from Mr. Littman in New Jersey.

Q. Now, besides these dealings with the defendant Joseph Littman and the defendant Mario Balestreri, did you make deliveries to other persons that you have mentioned? A. Oh, yes.

Q. And were they your customers or were they customers of Chapman?

A. They were all customers of Mr. Chapman.

(Testimony of Harry Winkelblack.)

Q. Did Mr. Chapman introduce you to all those customers?

A. Yes, he did. In most cases, yes. Some of them didn't want to be introduced.

Mr. Burns: I move to strike that.

The Court: Yes, the last part may go out.

Q. (By Mr. Riordan): Did you know Joe Pitta? A. No, sir.

Q. Did you know Michael Peccini?

A. I saw him on two or three occasions, yes. He was pointed out to me by Mr. Chapman at the Lake Merritt Hotel in Oakland.

Q. Did you ever hear Mr. Chapman either Joe Pitta or Michael Peccini? A. Yes.

Q. What were the conversations at that [42] time?

Mr. Burns: We make the objection, likewise, incompetent, irrelevant, and immaterial.

The Court: Overruled.

A. In the early part of January Mr. Chapman told me that he had been to San Jose and that he had been informed by Mr. Balestreri that a Joe Pitta was working with the Government agents going out and making sales and purchases for the Government, and that he had sold to—Mr. Chapman himself had sold heroin to these two men, Joe Pitta and Mike Peccini, earlier in 1950, and that it was just a matter of time before he would be arrested, and that was the reason he was going to introduce me to his customers up and down the coast.

(Testimony of Harry Winkelblack.)

Q. You mean Mr. Chapman was, when he learned Michael Peccini was a Government narcotics agent and Joe Pitta was an informer, he was in fear of being arrested at any time?

A. That is right. He told me he was certain they were just waiting, as they did in other cases, and that he would be arrested almost any time, just depended on when they wanted to make the arrest.

Q. Because he made the sales to Michael Peccini and Joe Pitta, is that right? A. Yes.

Q. Did Mr. Chapman tell you how he knew Michael Peccini was a Government agent?

A. He told me Mr. Balestreri had told him that it was his [43] belief that he was a Government agent and that Joe Pitta was working with him.

Q. And so Mr. Chapman was introducing you to all his customers, then? A. That is right.

Q. What was the reason for that?

A. So that in the event he was arrested I could carry on the business for him.

Q. That is, the narcotics business?

A. Yes.

Q. Did he say anything else about Joe Pitta or Michael Peccini?

A. Shortly after Joe Palm had gone to the penitentiary his sister—I believe her name is Mary Hare—called Chapman and told him she wanted to see him, very urgent business, and to meet her at Bones' corner at Taylor and Eddy Streets, which he did.

(Testimony of Harry Winkelblack.)

I went with Mr. Chapman to this place and met Mary Hare.

I did not sit in on the conversation, but when Abe and I returned to the car he told me Mrs. Hare had been to visit her brother, and that he had sent word back that it was definite that Joe Pitta was working with the Government, with this Mike Pecini, that for Abe to stay away from him at all costs, not go near him for anything, so that when Chapman returned to the car he was positive they were Government men [44] and he was convinced.

Q. Is that the only conversation Chapman had with you concerning a Government agent?

A. Well, many times after he was so positive they were, he would make the remark that Joe and Mike would have to go, that they would have to be gotten rid of some way.

Q. Do you know William Levin and Frank McKee?

A. Yes, sir.

Q. When did you first meet them?

A. In January or February, 1951, in San Mateo.

Mr. Riordan: May I ask the reporter to repeat that part of one answer?

The Court: Surely.

Mr. Riordan: The answer to other question, I think the words before were, "Joe and Mike would have to go."

(Thereupon the Reporter read: "that they would have to be gotten rid of some way.")

Mr. Riordan: Thank you.

(Testimony of Harry Winkelblack.)

Q. (By Mr. Riordan): You met them in San Mateo, you said? A. Yes, sir.

Q. And how did you meet them?

A. I drove Mr. Chapman there on a Sunday morning and met them right across from the Post Office Building in San Mateo.

Q. That is the City of San Mateo?

A. Yes, sir. [45]

Q. What was the purpose of that meeting?

A. To make arrangements for a sale of heroin to McKee and Levin.

Q. And what arrangements were made, or what was done?

A. The arrangements were made to deliver ten ounces—seven or ten ounces to McKee and Levin at Oliver's Restaurant in South San Francisco.

Q. And what took place then, at Oliver's Restaurant in South San Francisco?

A. Delivery was made. I took the package, as instructed, to Oliver's Restaurant and parked in front of the restaurant, and they drove up and Chapman took the package from me and handed it to Levin and McKee, which were only about ten or twenty feet from me.

Q. Did you see the actual package?

A. Yes.

Q. Did you have any other dealings with William Levin and Frank McKee?

A. Yes, sir. I took a sample of heroin to McKee one time on 19th Street in San Francisco, and on another transaction I took some opium which was

(Testimony of Harry Winkelblack.)

partially cooked to William Levin at his restaurant on Hyde Street, and he finished boiling down this opium and returned the solidified product to us a few days later after he had boiled it down.

Q. Have you talked to either William Levin or Frank McKee [46] since your arrest?

A. No, sir.

Q. You were arrested on March 23rd, 1951?

A. Right.

Q. You have not talked to them from that date until this? A. No, sir.

Mr. Riordan: That is all, your Honor.

Mr. Burns: Does your Honor wish me to proceed?

(Discussion regarding recess omitted.)

The Court: We will take a recess until 2:00 o'clock. [47]

Tuesday, August 18, 1953, 2:00 o'Clock P.M.

HARRY WINKLEBLACK

a witness called on behalf of the Government, having been previously duly sworn to tell the truth, the whole truth and nothing but the truth, testified further as follows:

Cross-Examination

By Mr. Burns:

Q. Mr. Winkelblack, you have never seen Mr. Littman, before today, have you? A. No, sir.

(Testimony of Harry Winkelblack.)

Q. You have seen a picture of him?

A. Not that I recall.

Q. You have never talked to Mr. Littman?

A. No, sir.

Q. I don't believe you have ever talked to Mr. Balestreri? A. No, sir.

Q. Now, with reference to Mr. Littman, you testified to certain communications you addressed to him, is that right? A. Yes, sir.

Q. Now, do you recall the address that was given to you?

A. It was Patterson, New Jersey. I believe it was an address on either 32nd or 23rd Street. It's a long time and I don't recall.

Q. You have had occasion to discuss since that address was furnished to you, haven't you? [48]

A. No, I haven't.

Q. You have talked to Mr. Craig about it?

A. Not about his address, no, sir.

Q. Have you talked to Mr. Karesh about it?

A. No, sir.

Q. When you were arrested on March 23rd, did the officer ask you from whom you had received the shipment? A. Yes, sir.

Q. And from whom did you say you received it?

A. From Waxey Gordon.

Q. Was that the fact?

A. To the best of my knowledge, it was.

Q. That, Mr. Winkelblack, was just an assumption on your part, wasn't it?

A. Only what Mr. Chapman told me.

(Testimony of Harry Winkelblack.)

Q. That is all you know about this whole thing, is what Mr. Chapman has told you?

A. That's right. I addressed letters to Mr. Littman. He told me that the packages were coming from Mr. Gordon.

Q. But you, of your own knowledge, don't even know if there is such a person as Joseph Littman?

A. No, sir.

Q. Or that he lives in Patterson, New Jersey?

A. No, sir.

Q. Every thing you know about Mr. Littman was told to you by [49] Mr. Chapman?

A. Yes, sir.

Q. It is likewise true, is it not, Mr. Winkleblack, that you never at any time saw Mr. Balestreri give anything to Mr. Chapman?

A. I have seen packages come from his possession or premises to Mr. Chapman.

Q. But you weren't there to witness the actual transfer of the package, were you?

A. No, sir.

Q. You didn't search Mr. Chapman before you went into Mr. Balestreri's home, or his automobile, to determine whether or not he already had that package with him?

A. No, I did not.

Q. When he returned, he produced a package?

A. Yes, sir.

Q. And so, in testifying here before the ladies and gentlemen of the jury, it is your testimony that what you know about Mr. Littman, you heard from Mr. Chapman, is that right?

A. That's right.

(Testimony of Harry Winkelblack.)

Q. What you heard Mr. Balestreri to have done with Mr. Chapman, Mr. Chapman told you, isn't that right? A. That's right.

Q. So you are testifying by way of hearsay?

A. In a manner of speaking, yes. [50]

Q. So you testified, I believe, that you received a shipment from Mr. Littman or "we" received a shipment from Mr. Littman, but you don't know from whom that shipment came?

A. Only that I ordered from Mr. Littman.

Q. You ordered it from a person named Joe Littman, at a certain address that had been furnished you? A. Yes, sir.

Q. Likewise, when you told the authorities on the date of your arrest that the package had come from Waxey Gordon? A. Yes, sir.

Q. How do you arrive at that conclusion?

A. I had been back East previously with Mr. Chapman in the same month and he had made arrangements with Waxey Gordon to receive the merchandise. In fact, I had a half of a bill in my pocket. The other half was supposed to be in Mr. Gordon's possession. In the event I went to New York to pick up the narcotics, Mr. Gordon would know who I was. I was still to address the letters to Mr. Littman.

Q. When was it you made this trip to New York?

A. I didn't go all the way to New York. I stopped in Chicago on March 5, 1951.

Q. March 5, 1951, is that right?

(Testimony of Harry Winkelblack.)

A. Yes, sir.

Q. You stopped in Chicago?

A. And Mr. Chapman went on to New York and phoned me from [51] New York, and came back to Chicago and we drove back from Chicago.

Q. So what arrangements Mr. Chapman made in New York and with whom they were made, all you know is what Mr. Chapman told you?

A. That's correct.

Q. You weren't there?

A. I was not there.

Q. So when you told the authorities in San Leandro that this package came from Waxey Gordon, that was hearsay on your part, wasn't it?

A. Only what I had been told, yes, sir.

Q. You have no other knowledge, do you?

A. No, sir.

Q. Now, this package when it was received by you, did it have a return address on it?

A. I guess it did. I didn't have the package long enough to examine it very closely. It had a return "Chicago" address on it.

Q. Didn't you testify this morning that you were expecting this package from Mr. Littman?

A. Yes, sir.

Q. That you had written to him?

A. I wrote to him about March 16 and asked him to send exactly what the package contained. [52]

Q. And the package came from Chicago shortly after you left Chicago?

(Testimony of Harry Winkelblack.)

A. A matter of two or three weeks. This was on the 23rd; it was approximately 16 days.

Mr. Burns: Mr. Riordan, I believe there was a wrapper that was on this package and that you introduced for identification. The Clerk tells me that the wrapper has been withdrawn. I would like to see it.

Mr. Riordan: We gave the wrappers to the Bureau of Narcotics to be photographed, your Honor, and they haven't been returned. We asked for it right now.

Q. (By Mr. Burns): Well, it is a fact, is it not, insofar as you know, if you know any facts, Mr. Winkelblack, that this package came from Chicago?

A. So I have been told, after my arrest, and I glanced at the return address at the time I was in the party's house to where it was delivered and I believe it was a Chicago post mark.

Q. Air express, isn't that right?

A. I believe so. I didn't receive the package.

Q. It wasn't sent through the mail?

A. I couldn't actually say as to that. All I know, it was sent to Mrs. Eva Lewis in San Leandro and I understood it was to be by air express.

Q. Well, it was sent to your wife, wasn't it? [53]

A. Addressed to my wife, in care of Mrs. Eva Lewis, San Leandro.

Q. And you were expecting this package about the 22nd of March, is that right? A. Yes, sir.

(Testimony of Harry Winkelblack.)

Q. And when was it you had returned from Chicago? A. About March 8th.

Q. Now, did you leave anyone instructions in Chicago to send you this package? A. No, sir.

Q. Now, you know it to be a fact, do you not, Mr. Winkelblack, as you sit there on the stand, that this package was sent from Chicago by Mr. Barney Gold?

A. I have been told that, but I don't know Mr. Gold. All I know is where I ordered it.

Q. And so, if you left the impression with the ladies and gentlemen of the jury that this package came from Mr. Littman, according to Mr. Chapman, that is not correct, is it?

A. I ordered exactly what was in the package from Mr. Littman and the package came. I don't know where it came from.

Q. Well, do you mean to tell the ladies and gentlemen, as you sit there now on the witness stand, you don't know it came from Chicago?

A. I do not. [54]

Q. You didn't see the air express label on the package? A. No, I didn't look at it.

Q. You have had no occasion, during the course of your trial in the State Court or the proceedings in the State Court, to examine it?

A. No, sir. I pleaded guilty and I didn't have any trial.

Q. Wasn't this introduced into evidence?

A. The package was at one time when I was

(Testimony of Harry Winkelblack.)

trying to have my bail reduced, but I wasn't paying any attention to the return address.

Q. Didn't you have a preliminary hearing where they marked these various contents into evidence or about sometime in June? A. Yes.

Q. And this package, likewise?

A. Yes, they were there as evidence.

Q. And the wrapper on it?

A. On that package, I believe it was in Redwood City, sometime in July.

Q. And it is your testimony that you still don't recall seeing that it came from Chicago?

A. No, only by hearsay again I have heard that it came from Chicago from a Mr. Gold, but I don't know Mr. Gold, but up until that time, I was of the understanding it came from New York. [55]

Q. Who supplied the authorities the name of Mr. Gold so he could be included as a co-conspirator? A. In the newspapers.

Q. Just the newspaper? A. That's right.

Q. Mr. Karesh took his name out of the newspaper and included him in the indictment, is that right? A. I don't know about that.

Q. So your testimony, if it was your testimony, that this package came from Patterson, New Jersey, is not the fact, as you now recall the fact, is that right?

A. I don't recall saying it came from Patterson. I ordered it from Patterson, New Jersey.

Q. And you assumed it had been sent by Mr. Littman?

(Testimony of Harry Winkelblack.)

A. I assumed that it came from Mr. Gordon or Mr. Littman.

Q. But you don't know at all who sent the package? A. No, I don't.

Q. So you can't testify here under oath that it was sent by Mr. Littman or any other person, is that all right?

A. All I can say, I ordered it from Mr. Littman.

Q. And you ordered it at the address that was furnished to you, whether Mr. Littman was at that address or not, you can't testify, can you?

A. No.

Q. Whether Mr. Littman ever received any communication from, [56] you, you cannot testify, can you?

A. None other than the letters would be verified by telephone, through Mr. Gordon, the following week.

Q. And who gave you that information, Mr. Winkleblack?

A. I was on the other end of the phone in most instances and when we would send a package of shirts to New York to Mr. Littman, the phone call would come through the following Sunday and I would answer the phone. The call would come to me as Al Green and they would verify the fact that the shirts had been received and the money.

Q. And who was on the other end of the wire?

A. In some instances, Mr. Schiffman and in some instances Waxey Gordon.

(Testimony of Harry Winkelblack.)

Q. You tell us the first time you spoke to Mr. Gordon on the telephone?

A. Well, it was about January the 10th or 11th, 1951.

Q. And your conversation with Mr. Gordon was that he had received certain shirts, is that right?

A. Just asked if he got the shirts.

Q. Did he call you or did you call him?

A. He called me.

Q. And you asked him if he had received the shirts? A. That's right.

Q. He verified the fact that you had?

A. That they had, yes. [57]

Q. When is the first time that you talked to Mr. Schiffman on the phone?

A. Around the same time, probably; the same day. Sometimes they both call on the same morning.

Q. From where were these calls made?

A. Made from New York, to either Uncle Tom's Cabin in San Bruno or Bondy's in Belmont.

Q. Do you recall talking to Mr. Schiffman on March 18?

A. March 18? I don't remember that date, no, sir.

Q. Do you recall telling the agents that you had had such a conversation on March 18th?

A. I talked with Mr. Schiffman on various occasions.

Q. At least, Mr. Winkelblack, you talked to

(Testimony of Harry Winkelblack.)

someone who represented themselves to be Mr. Schiffman?

A. I would recognize Mr. Schiffman's voice or his conversation. I knew Mr. Schiffman quite well at Leavenworth.

Q. And you knew Mr. Waxey Gordon?

A. No, I didn't. I never met Mr. Gordon.

Q. Would you have recognized his voice?

A. No, I didn't. I took their word for it.

Q. I show you, Mr. Winkelblack, this object that has been marked Plaintiff's Exhibit 4 for identification and ask you if you recognize that.

A. Yes, that is the same wrapper the package came to San Leandro on March 23rd. [58]

Q. And do you recall there is a return address on it? A. Yes.

Q. What is that return address?

A. To an address in Chicago, Illinois.

Q. Who is set forth as the sender?

A. It says, "Frank Wink, 5240 Mauldin, Chicago, Illinois" as the return address.

Q. And "Wink" is the name you use, is it not?

A. That's right.

Q. Who is Frank Wink?

A. I don't know.

Q. Did you give instructions to anyone in Chicago to use that name? A. No, sir.

Q. Now, that package, you know now, also arrived in San Leandro, did it not? A. Yes, sir.

Q. It was never in Burlingame?

A. No, sir.

(Testimony of Harry Winkelblack.)

Q. Did Mr. Littman ever send you any packages or anyone that you assumed to be Mr. Littman, send you any packages in San Leandro?

A. This package came to San Leandro from—I ordered it from Mr. Littman. I don't know who it came from.

Q. Previous to the arrival of this package, did you have any [59] conversation with Mr. Barney Gold in Chicago?

A. No, sir, I never heard of the name before.

Q. It is your testimony that you never heard Mr. Chapman mention Mr. Barney Gold?

A. I never did.

Q. You have never heard Mr. Gordon mention Barney Gold?

A. No, I never talked to Mr. Gordon.

Q. You yourself did not address any communications to Mr. Barney Gold? A. No, sir.

Q. Now, the day of your arrest, you said that you had been to either San Jose or either Redwood City or San Mateo in the company of Mr. Chapman and you saw Mr. Balestreri, is that right?

A. That's right.

Q. I believe you testified that you did not witness the transaction, but when Mr. Chapman returned to the car, he had a certain quantity of heroin, is that right?

A. This is on the day of my arrest; the morning. I was arrested in the afternoon.

Q. You were arrested about two o'clock?

(Testimony of Harry Winkelblack.)

A. Yes, sir. This was in the morning, around nine o'clock.

Q. When you say "around the clock," Mr. Winkelblack, could you be a little more specific?

A. As nearly nine o'clock as I can remember.

Q. I don't want to pin you down, but it is rather important. Was it closer to ten or closer to eight?

A. We waited quite awhile there and that's been almost three years ago, so I couldn't say. I know it was in the morning.

Q. You wouldn't care to say?

A. I couldn't say, honestly, no.

Q. How long did you wait, did you say?

A. Approximately an hour.

Q. Where was this waiting done?

A. At the Andrew Williams' store near 35th and El Camino, San Mateo.

Q. And so what time would you say it was that Mr. Balestreri arrived?

A. I would say around nine o'clock.

Q. And you had driven from where?

A. From Burlingame, on the San Mateo-Burlingame line.

Q. And Mr. Chapman was with you?

A. I picked up Mr. Chapman at 29th and El Camino Real, by the "Winner's Circle Tavern."

Q. You hadn't made any arrangements for this meeting personally, had you?

A. No, I hadn't.

Q. It was about ten o'clock, you say, that Mr. Balestreri arrived, is that right? [61]

(Testimony of Harry Winkelblack.)

A. Around nine; between nine and ten. I cannot recall the exact time.

Q. And then you, I believe you testified, took the object that you received from Mr. Balestreri to your home in Burlingame? A. That's correct.

Q. And when was it that you heard that this package had arrived from San Leandro for your wife? A. About noon on this date.

Q. And where were you when you received that?

A. A telephone call, at home, in Burlingame.

Q. You had returned to your home?

A. That's right.

Q. I believe you said that you left the object, that you received from Mr. Chapman, which he claimed he received from Mr. Balestreri, in your home? A. Yes, sir.

Q. You put them in the china closet?

A. I mixed them immediately that afternoon with some more heroin that I had in the house. He had a sale that day for 15 ounces and he wanted to have one sack ready.

Q. You likewise mixed it with milk sugar, didn't you?

A. I added a little milk sugar, yes, sir.

Q. What does that do to heroin?

A. It dilutes it and it looks almost like the same substance. [62]

Q. The purpose is to sell it as pure heroin when in fact it is diluted heroin?

A. The purpose is to sell it, I guess, for as much

(Testimony of Harry Winkelblack.)

profit as you can make out of it, get the customers to take it.

Q. And you were selling to a number of people, were you not?

A. I was delivering for Mr. Chapman, yes.

Q. Like your trip to Reno, when you sold it to Mr. Sahati, whom you knew to be an addict, is that the fact?

A. I had heard he was. I never saw any of them use it.

Q. Did you ever use it? A. No, sir.

Q. Now, you then proceeded to San Leandro, upon receipt of the news that this box had come in is that right? A. That's correct.

Q. In the company of your wife?

A. That's right.

Q. You went to this place in San Leandro?

A. Yes, sir.

Q. You picked up the package?

A. Yes, sir.

Q. And were immediately apprehended?

A. Yes, sir.

Q. And you advised the authorities upon your apprehension that you had further narcotics at your home in Burlingame? [63]

A. That's correct.

Q. Did you tell them from whom you had received them? A. Not at that time, no, sir.

Q. When is the first time that you told them?

A. Well, it was sometime later. I couldn't say for sure. I told the State narcotics agent quite

(Testimony of Harry Winkelblack.)

awhile later and I do not remember the exact time I first told them who it came from.

Q. You were held in custody in San Leandro and the search was made of your home in Burlingame?

A. I was held in San Leandro only a few hours, two or three hours, and transferred to the Alameda County Jail.

Q. You were held in custody in Alameda County? A. Yes, sir.

Q. While you were in such custody, certain State agents made a search of your premises in Burlingame? A. That's right.

Q. You had informed them that these narcotics were there? A. Yes, sir.

Q. And did you tell them that you had picked them up in Redwood City that morning?

A. I didn't tell them at that exact time, no, sir.

Q. Did you tell them where they were?

A. I didn't pick them up in Redwood City. That was San Mateo. [64]

Q. I mean the location of the narcotics in your home. I believe you testified you told them you had it in your china closet?

A. In Burlingame, yes, sir.

Q. Is your china closet—does it have a false bottom?

A. No, it was a little china cabinet with glass doors that projected into the kitchen. I sawed the bottom shelf out of it and left them so they could be replaced without any nails.

(Testimony of Harry Winkelblack.)

Q. That is the location you told the authorities, is that right? A. That's correct.

Q. Now, those were two bundles, I believe, did you not testify this morning? A. Yes, sir.

Q. Are these the two, Exhibit 7?

A. They look like the same two, yes, sir.

Q. Which of those did Mr. Chapman tell you he received from Mr. Balestreri?

A. These were mixed before they seized them from my house, and of course, it would be in the largest package, the ten ounces, and whatever amount I had in my house, were all mixed together first and fifteen ounces measured out of the entire mixture.

Q. That was a sale you contemplated? [65]

A. Yes, sir.

Q. Did you make that sale that day?

A. No, sir, I was arrested.

Q. Were you on the way to make that sale at the time you picked up the package?

A. No, sir, I was going to pick up the big package and then return to the house and probably mix it all over again, to make it a little stronger, before I gave them the fifteen ounces.

Q. So he continued to be a customer of yours; not get just no sugar, is that right?

Mr. Riordan: I object to that on the grounds it calls for the opinion and conclusion of the witness.

The Court: Sustained.

Q. (By Mr. Burns): Now, the container that

(Testimony of Harry Winkelblack.)

that came from in Redwood City or San Mateo, what did you do with that?

A. I probably burned it in the incinerator.

Q. But you don't have any recollection that you did?

A. I usually did after I received any package. I was instructed to burn it immediately and if it had any wrappings of any kind, to destroy it.

Q. Now, you say that your first communication to Mr. Littman or the person you were informed was Mr. Littman, was sometime in January, was that right?

A. I wrote to Mr. Littman on January 2nd and received the [66] package that I asked for on January 8th.

Q. You received that at Burlingame?

A. Mrs. Chet Wood received it at her home.

Q. And who is she?

A. She was the lady that had the apartment in the apartment house where we had just moved from. In fact, she was the only occupant at the time. Her husband worked at the airlines.

Q. After you wrote the letter of January 2nd, you had moved to Highland after, is that right?

A. Yes, sir.

Q. You were informed on or about January 8th that there was a package for you and you went and picked it up? A. That's right.

Q. You weren't in the company of Mr. Chapman then, were you? A. No, I wasn't. I was alone.

Q. You took it over to Highland after?

(Testimony of Harry Winkelblack.)

A. Yes, sir.

Q. You mixed it?

A. No, I indicated Mr. Chapman to come. I didn't know much about mixing it at that time.

Q. How long had you been with Mr. Chapman?

A. Approximately two weeks.

Q. I thought you told us that you had met Mr. Chapman in [67] October?

A. I had, but I had nothing to do with narcotics until the first of January.

Q. That's January 1 of 1951? A. Yes, sir.

Q. Were you employed on a yearly basis?

A. No, sir.

Q. But on January 2, you wrote your first communication? A. Yes, sir.

Q. At the direction of Mr. Chapman?

A. Yes, sir.

Q. And then I suppose, Mr. Winkelblack, that you disposed of that narcotics that you received on January 8th?

A. Disposed of the contents?

Q. Yes.

A. I delivered it as he instructed me.

Q. Always in his company?

A. Always and most instances, if it was in the City of San Francisco or nearby, we took two cars. He would tell me where to meet him and he would go in his car and I would be there in mine. I would be at the spot at a designated time and hand him the packages.

(Testimony of Harry Winkelblack.)

Q. And of course you didn't follow that practice when you flew to Reno?

A. I didn't deliver to Reno. I only went there to collect. [68] They came to San Mateo to pick up the narcotics.

Q. Now, you received a package on January 20th, did you not, Mr. Winkelblack?

A. Around January 20th, yes; not from Mr. Gordon or Mr. Littman, though.

Q. That was, you say, from Mr. Olivero?

A. Around the 20th of January.

Q. Had you requested that delivery to be made to you? A. Yes.

Q. And in what fashion? A. By letter.

Q. And you had been given Mr. Olivero's name by whom? A. Mr. Chapman.

Q. Do you know Mr. Olivero?

A. No, I don't.

Q. Do you know such a person as Mr. Olivero?

A. No, I did not.

Q. That was in what city, did you address that?

A. Kansas City, Missouri.

Q. How many pounds did you receive then?

A. I believe it was a full kilo.

Q. Now, a kilo is two and a half pounds?

A. Two and two-tenths pounds.

Q. Now, you received two and two-tenths pounds on January and you received eight—rather, you received two and [69] two-tenths pounds on January 8th and you received two and two-tenths on January 20th, did you not? A. Yes, sir.

(Testimony of Harry Winkelblack.)

Q. How much did you receive from Robert Reynolds in February?

A. I believe it was a half of a kilo.

Q. What would that be? One and one-tenth?

A. About seventeen ounces.

Q. You received that February 19th, did you not? A. Around that date, yes, sir.

Q. Shortly after you returned from Reno, was it not?

A. Yes, sir, I went to Reno about every week.

Q. You testified you had gone up there February 13th?

A. Yes, and I was back on the following day, on the 14th.

Q. So you received half a kilo from Mr. Reynolds in February of 1951, on February 19th, 1951, is that right?

A. I'm not sure if I received the package that time or if it was a sample that came from Mr. Reynolds.

Q. Yet you testified this morning that on February 22nd, you were in the company of Mr. Chapman and made a visit to Mr. Balestreri to try and get some narcotics, because you were expecting a shipment? A. That's right.

Q. You had received a shipment on February 19, did you not? A. That's correct. [70]

Q. And had you disposed of that in the meantime? A. Yes, sir.

Q. From whom were you expecting the shipment around February 22nd?

(Testimony of Harry Winkelblack.)

A. I wrote the letter to Mr. Littman.

Q. And did you receive a package shortly after that?

A. I received it on the 23rd.

Q. Of February?

A. Yes, sir, delivered to Mrs. Eva Lewis.

Q. In San Leandro? A. Yes, sir.

Q. Now, was that package air express too?

A. I wouldn't say for sure as to how it was delivered.

Q. Did you observe as to what return address it had on it?

A. No, I didn't.

Q. Do you know whether it came from Mr. Barney Gold in Chicago?

A. No, sir, I couldn't say.

Q. Do you know whether it came from Charley Schiffman?

A. I couldn't definitely say.

Q. You can't say it came from Mr. Littman, can you?

A. No.

Q. Now, you say you flew to Reno almost every week and, that you recall sending a post card to Mr. Littman on February [71] 13th?

A. Right.

Q. From the airport? A. Yes, sir.

Q. It is your testimony that you wrote on a post card to Mr. Littman, "Please send me a kilo of heroin?"

A. That's correct.

Q. An open post card?

A. Not an open post card; a greeting card inside an envelope. I never called it a kilo or anything like that. They had their own code in the

(Testimony of Harry Winkelblack.)

letters, to send so many pounds—different ways of writing it. He told me how to say it each time.

Q. You say they had a code. Who were “they”?

A. Between Mr. Littman, Mr. Gordon, Mr. Chapman, Mr. Schiffman, whoever was supplying the narcotics on the other end.

Q. Now, about Mr. McKee and Mr. Levin?

A. Mr. McKee and Levin only bought from me, as far as I know.

Q. They only bought from you?

A. I delivered it for Mr. Chapman.

Q. They never went in together on the purchase of any narcotics?

A. Not to my knowledge. They didn't prior to my arrest, [72] let's put it that way.

Q. You have heard since your arrest, they did?

A. Only through newspapers.

Q. You haven't seen them? A. No, sir.

Q. You haven't been over to San Rafael?

A. No, sir, I haven't.

Q. Now, you say that you mailed 30 packages for Mr. Chapman, back east, is that right?

A. Yes, sir.

Q. And the contents of the packages consisted of sport shirts and money, is that right?

A. That's correct.

Q. When is the first time you mailed any package?

A. During January; around the middle of January, 1951.

(Testimony of Harry Winkelblack.)

Q. And what was in that package in the way of a garment?

A. They had three sport shirts and I don't recall the exact amount of money. I believe it was \$4,000.

Q. And did you purchase the sport shirts?

A. No, I didn't. Mr. Chapman purchased the shirts.

Q. Where?

A. Harold Siegel's in Oakland.

Q. Was that the same place he told you he had purchased a sport shirt in December of 1950, after he had sold narcotics to Mr. Peccini? [73]

A. He mentioned the fact that he had paid them some money at one time and he was sending shirts in Harold Siegel's store.

Q. They had paid who some money?

A. He received some money from Joe Pitta and at that time he put it right in with some shirts in Harold Siegel's clothing store and mailed it to Mr. Littman.

Q. He told you he mailed it to Mr. Littman?

A. Yes, sir, or had the clerk in the store mail the package.

Q. He told you Mr. Peccini was there in December? A. Yes.

Q. Did he tell you at that time he knew he was a State agent?

A. He wasn't convinced that he was, no, sir.

Q. You referred to some conversation that you relate with Mr. Chapman wherein Mr. Chapman in-

(Testimony of Harry Winkelblack.)

formed you Mr. Balestreri had advised that Mr. Peccini was an agent? A. That's right.

Q. Tell us about that, Mr. Winkelblack. When was that conversation?

A. That was during the early part of January. I was riding with Mr. Chapman and he told me that he had been to San Jose and that Mr. Balestreri had told him he was quite sure that Jose Pitta was working with the Government. He didn't know [74] who the other fellow was, only by the name of Mike, but they weren't certain yet. He wouldn't believe it, because he had known Joe Pitta for many years.

Q. When did Mr. Chapman tell you this conversation with Mr. Balestreri occurred?

A. He didn't say, but I presume it to be within the two days previous to that time he told me.

Q. When he told you? A. In January.

Q. The early part of January?

A. Yes, sir.

Q. Was that before or after you had your conversation with Joe Palm?

A. That was before.

Q. And your conversation with Joe Palm was on January 8th, 1951?

A. I met Mr. Palm about that time. I never carry on any conversations with Mr. Palm.

Q. You didn't hear any conversation between Mr. Palm and Mr. Chapman, did you?

A. No, sir.

(Testimony of Harry Winkelblack.)

Q. Because Mr. Palm was in jail on January 8th, 1951, wasn't he?

A. When I saw Mr. Palm he was standing on the corner. He was out on bail, waiting for—trying to get a re-hearing, [75] whatever it was. It was the early part of January.

Q. If the indictment alleges that January 8th as the overt act in which you participated, that isn't the fact, is it?

A. I don't recall saying that definite time, January 8th, that I talked to Mr. Palm.

Q. Well, you didn't have any conversation with Mr. Palm, did you?

A. Only as an introduction. They said, "This is the fellow I have been telling you about that came from back east."

Q. Where is your home back east?

A. I lived in the southern part of Illinois.

Q. You were living in California in October of 1950, is that right?

A. Yes, sir.

Q. That is when you met Mr. Chapman?

A. Yes, sir.

Q. In San Mateo?

A. That's right.

Q. Now, getting back to these packages that you sent, you say that the first one was sent from Siegal's?

A. The first package of shirts?

Q. That's right.

A. To the best of my knowledge, the first one was, yes, sir.

Q. You didn't make out the label on that package, did you? [76]

A. No, I didn't.

(Testimony of Harry Winkelblack.)

Q. You testified this morning that you made out the label on some of these packages.

A. I have, yes, sir.

Q. Where was that done?

A. Usually at my house. I had a rented typewriter.

Q. And did you mail those packages yourself?

A. I have mailed one or two packages. I mailed one from the 29th Street Substation in San Mateo. I mailed one from the main post office in San Mateo; shirts with money in it.

Q. And you are the one that put the money in?

A. Yes.

Q. In the presence of Mr. Chapman?

A. That's correct.

Q. Each time Mr. Chapman was present?

A. Every time, yes.

Q. Now, did Mr. Chapman ever mail any packages when you weren't present?

A. He has mailed packages. I would drive him to the post office or a stationery store, near the post office, so he could have the packages wrapped and I would remain in the car.

Q. And you didn't address those packages, did you?

A. No, sir.

Q. Or print the labels? [77] A. No, sir.

Q. Now, you, as we now know, met Mr. Chapman in October of 1950, but you didn't begin working for him until January of 1951, is that right?

A. That's correct.

Q. And you received two packages or four and

(Testimony of Harry Winkelblack.)

four-tenths ounces of heroin during the month of January, is that right?

A. I believe that's right.

Q. And you were the one that made the deliveries of those?

A. I delivered it where he had told me, wherever he instructed me, yes, sir.

Q. You are the one that measured?

A. I did.

Q. You are the one that diluted?

A. Yes, sir, sometimes with his assistance in my home or Mr. Chapman's.

Q. Now, you didn't see Mr. Balestreri any time during January? A. No, sir.

Q. But you had heard some mention of Mr. Balestreri from Mr. Chapman? A. That's right.

Q. And Mr. Chapman indicated to you that he had been to San Jose and he had a conversation with Mr. Balestreri with relation to the identity of Mr. Pitta and Mr. Peccini, is that right? [78]

A. Yes, sir.

Q. The first time you went to San Jose was sometime in February? A. I believe the 1st.

Q. February the 1st. A. Yes, 1st or 2nd.

Q. And you went to where in San Jose?

A. Palm's Bar on First Avenue. We drove there first. We went to the Hawaiian Shack too, and he inquired there if they knew where he was. I don't know—I am not familiar with San Jose.

Q. And you didn't find Mr. Balestreri in San Jose? A. No.

(Testimony of Harry Winkelblack.)

Q. Then you drove where?

A. We drove to a farm. He had some difficulty in finding the place and it was night then.

Q. What time of night?

A. Around ten or ten-thirty.

Q. What time did you arrive in San Jose?

A. About eight-thirty, nine o'clock.

Q. Did Mr. Chapman tell you he previously had no difficulty in finding Mr. Balestreri?

A. * * *

Q. He didn't say that?

A. No, he thought he knew where to find him, but he had some [79] difficulty.

Q. You went out to the farm? A. Yes, sir.

Q. And you didn't talk to Mr. Balestreri?

A. No, I did not.

Q. Will you tell the ladies and gentlemen in which direction from San Jose this farm is located?

A. No, I can't tell you from this building.

Q. Can you tell us what distance you covered?

A. Well, it took fifteen or twenty minutes before we found the place.

Q. Did you go to any other place besides the Hawaiian Club?

A. Went to Tom's Bar, the Hawaiian Club and to a residence in San Jose where he thought he might be.

Q. Did he get out of the car at the residence?

A. No, he didn't. He looked to see if the car was there and he said, "He must not be here either."

Q. That was at nine o'clock in February of 1951?

A. That's correct.

(Testimony of Harry Winkelblack.)

Q. The car wasn't there?

A. The car wasn't near this residence where he had expected it might be.

Q. Was there a garage at that residence?

A. Not that I saw.

Q. You don't know? [80] A. No, I don't.

Q. So you went out to the farm, and how long were you there?

A. Approximately 30 minutes.

Q. You stayed in the automobile?

A. Yes, sir.

Q. And I believe you testified that Mr. Balestreri and Mr. Chapman talked on the porch?

A. That's correct, when he came out.

Q. I believe you testified that you returned there the next day, is that right?

A. Not to the farm, no; to San Jose, to the Chinese Supermarket.

Q. Where is that located?

A. On Fourth Street, near Bayshore, out in that direction.

Q. And you didn't see what transpired between Mr. Balestreri and Mr. Chapman? You were standing in the window of the supermarket, is that right?

A. I only saw that he got in the car and came back in a few minutes and produced a package when he returned and put it on the floor of my car.

Q. Now, the next time was in February, is that right?

A. Well, that was February, the first time.

Q. The first time?

(Testimony of Harry Winkelblack.)

A. The next time was on February 22, at Redwood City, at [81] a filling station.

Q. That was three days after you had received the shipment from Mr. Reynolds?

A. That's correct.

Q. And then you again saw him when?

A. I believe it was around the 1st—no. The next time was about the 25th or 26th of February, near the Ben Franklin Hotel.

Q. And when after that did you next see him?

A. About the 1st of March, thereabouts.

Q. And that was where?

A. That was in San Jose, also.

Q. Where did you see him next?

A. At the Chinese supermarket, again on March 15th, the day he lost the ring.

Q. You also recall that because it was income tax day?

A. That's right.

Q. Had you filed your income tax return by that time?

Mr. Riordan: I object to that as incompetent, irrelevant and immaterial.

Mr. Burns: I am testing the credibility of this witness. He said he knows March 15th was tax day.

The Court: I guess everybody knows that.

Mr. Burns: Not if it is withheld.

The Court: Well, if you consider it is important, I will [82] allow the witness to answer.

Q. (By Mr. Burns): You then saw Mr. Bal-estrieri when?

A. On the morning of my arrest, March 23rd.

(Testimony of Harry Winkelblack.)

Q. March 23rd at about nine to ten o'clock?

A. That's right.

Q. In San Mateo? A. Yes.

Q. Now, on none of these occasions did you speak to Mr. Balestreri? A. No, sir.

Q. On none of these occasions did you hear any conversation between Mr. Balestreri and Mr. Chapman?

A. Only the few words that I mentioned that time, at the rural residence, that he would see him the following day and pick it up, I believe he said.

Q. Did Mr. Chapman have any other business?

A. He worked part time a little with a roofing concern.

Q. And in what capacity?

A. I think he was a salesman.

Q. He was selling roofing, isn't that right?

A. Yes, but he didn't do too much of that work after I knew him, at least.

Q. Insofar as you knew?

A. That's correct.

Q. How many hours a day would you say you spent with [83] Mr. Chapman?

A. Well, there would be no way of averaging that, but I saw him practically every day. Sometimes I would be with him all day, and the next day, maybe only five minutes, if he had nothing for me to do. I was working part time landscaping.

Q. And where was that? Down the peninsula?

A. Hillsborough.

Q. Now, going back to February 22nd and Feb-

(Testimony of Harry Winkelblack.)

ruary 23rd, I believe you testified you saw Mr. Balestreri either on both those days or just one, is that right? A. Just one day.

Q. What day was that?

A. On the evening of the 22nd, Washington's Birthday.

Q. You say the evening; what time?

A. That was around nine o'clock. I know it was quite dark. I also recall an incident that night. I think the Alka-Seltzer program came on immediately after Mr. Chapman came, because I had on the car radio and he was mimicking the sponsor, and I recall that night very distinctly.

Q. This was about nine o'clock on February 22nd? A. Yes, sir.

Q. Now, the meeting on February 1st was in the evening, is that right?

A. February 1st, yes, sir. [84]

Q. And the meeting on February 2nd was in the day time? A. That's right.

Q. The meeting on February 22nd was at night?

A. That's right.

Q. Can you tell us on March 1st, the meeting on March 1st, whether it was day or night?

A. It was night also.

Q. And March 15th?

A. March 15th was day.

Q. And March 23rd?

A. That was in the morning.

Q. And on none of these occasions, other than

(Testimony of Harry Winkelblack.)

the first one, did you overhear any conversation between Mr. Chapman and Mr. Balestreri?

A. No, sir, I did not.

Q. I think you have already testified that you yourself never spoke to Mr. Balestreri?

A. No, I didn't.

Q. Now, you saw Mr. Balestreri on February 1 and February 2, then on February 4 and you also saw Mr. Levin and Mr. McKee, did you not?

A. I don't recall the exact day. It was on Sunday morning around the early part of February, I know, that I first met McKee and Levin.

Q. Where was that? [85]

A. Across from the post office in San Mateo. between Second and Third Avenue.

Q. Were you ever to their place in San Francisco?

A. I have been to Mr. Levin's residence in front. I never was to his place on Hyde Street where he lived.

Q. The 2700 block on Hyde?

A. I don't remember. It was down towards the wharf and his house was only about six feet away from the curb.

Q. And have you ever been to Mr. McKee's place of residence?

A. No, I haven't. I met Mr. McKee at 19th and Irving, at Kelly's bar, each time.

Q. And you didn't know him before Mr. Chapman introduced you? A. No, sir.

Q. Now, personally, you have met Mr. McKee

(Testimony of Harry Winkelblack.)

and Mr. Levin, is that right? A. Yes, sir.

Q. You have never met Mr. Littman?

A. No, sir.

Q. You never talked with Mr. Littman?

A. No, sir.

Q. And you have never met Mr. Balestreri?

A. No, sir.

Q. And you have never talked with Mr. Balestreri? A. No, sir. [86]

Mr. Burns: That's all.

(Whereupon the witness was examined on redirect examination by Mr. Riordan.)

* * *

Recross-Examination

By Mr. Burns:

Q. When is the first time you saw this red convertible, Mr. Winkelblack?

A. I believe that was the first occasion that I did see it.

Q. What date was that?

A. That was around the first part of March.

Q. Of 1951? A. 1951.

Q. You say that when you drove down there in February of 1951, Mr. Chapman assumed that Mr. Balestreri wasn't at his residence, because there was no car, is that right? A. That's correct.

Q. Did you observe a car out at the ranch?

A. No, I did not.

Q. Did you observe a garage out at the ranch?

(Testimony of Harry Winkelblack.)

A. I didn't pay any attention. I don't recall seeing a garage there either.

Q. The first time you saw this red convertible, was March 15th, is that right?

A. That's correct. I don't recall seeing the same car before or after. [87]

Q. What kind of a car did you see on February 2nd? A. It was a sedan.

Q. What kind?

A. I believe it was an Oldsmobile. I couldn't say exactly.

Q. You don't recall the color?

A. It was a late model.

Q. You don't recall the color?

A. No, I don't. It was a common color.

Q. What type of automobile did you observe on February 2nd? A. It was also a sedan.

Q. On February 22nd?

A. That was at night in Redwood City and he parked the car and walked approximately eight blocks, I guess. You couldn't see the car. He walked up towards the service station, from the side street.

Q. And you, Mr. Winkelblack, are assuming that he had a car with him?

A. Yes, I am assuming, on February 22nd.

Q. All you saw was Mr. Balestreri or someone you were told was Mr. Balestreri, walking?

A. That's correct.

Q. And you don't know whether he was in a car or was not in a car? A. No, I don't.

Q. The first time you saw him in February, he

(Testimony of Harry Winkelblack.)

was in a sedan? [88] A. That's correct.

Q. An Oldsmobile?

A. I wouldn't say if it was an Oldsmobile. It looked like a General Motors product.

Q. On March 1st, you saw him in the red convertible? A. Yes, sir.

Q. What kind of a car did you see him in on March 15th?

A. That was a sedan again. It looked like the same sedan I saw him in.

Q. And on March 23rd?

A. I didn't see his car on that morning either. He was walking again on the block by Andrew Williams' store.

Q. So you don't know how he proceeded to that meeting, if he proceeded at all, do you?

A. No, I don't.

Q. Do you know of anyone else in San Jose who is in the narcotics business?

A. In the narcotics business?

Q. Yes. A. Through others, yes.

Q. Can you name one or two of them?

A. I don't know their actual names. He did business with another fellow in San Jose, yes.

Q. Has that man been convicted?

A. I believe his name was Nani. I don't know the correct [89] name.

Q. Have you ever heard of the name of Pete down there? A. Pete?

Q. Hayward Gardens.

A. I have heard of him, yes, sir.

(Testimony of Harry Winkelblack.)

Q. Do you know who he is? A. No, sir.

Q. Have you ever seen him?

A. I believe I saw him, yes.

Q. How old a man is he?

A. He was in his middle 40's, if it is the correct man.

Q. Have you been shown pictures of him?

A. No, sir.

Q. Now, you say that the only person to whom you ever addressed any communication was to Mr. Littman, is that right?

A. No, sir, I didn't say that. The ones that came from New York, the only letters I addressed were to Mr. Littman. I also addressed to Mr. Olivero and Mr. Reynolds.

Q. But nothing to no one in Chicago?

A. No, sir.

Q. So you addressed communications at the request of Mr. Chapman to Mr. Reynolds and to Mr. Olivero, is that right? A. That's correct.

Q. You don't know either of those persons? [90]

A. No, sir.

Mr. Burns: That is all.

Mr. Riordan: No further questions.

(Whereupon an adjournment was taken until Wednesday, August 19, 1953, at 10:00 o'clock A.M.) [91]

August 19, 1953—10:00 o'Clock A.M.

* * *

August 20, 1953—9:30 o'Clock A.M.

ABRAHAM CHAPULOWITZ

a witness called on behalf of the defendants, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Please state your name to the Court and to the jury.

A. Abraham Chapulowitz.

Direct Examination

By Mr. Burns:

Q. You are also known as Abe Chapman, are you not? A. Yes.

Q. And you are presently in custody?

A. Yes.

Q. Confined to Alcatraz Penitentiary, is that right? A. That is right.

Q. That is in connection with a narcotics offense? A. That is right.

Q. You have suffered previous convictions of felonies, have you not, Mr. Chapman? [92]

A. That is right.

Q. Do you know the defendant, Joseph Littman?

A. Never saw him.

Q. You don't recognize him in this court room?

A. I don't know the man.

Q. Have you ever talked to him on the telephone? A. No, sir.

Q. Directing your attention specifically to the month of April, 1951, did you have occasion to call Mr. Littman or receive a call from him at the Buena Vista Bar located at Hyde and Beach Streets, San

(Testimony of Abraham Chapulowitz.)

Francisco, California? A. No, sir.

Q. Do you know the defendant, Mario Balestreri? A. That's right.

Q. For what period have you known him?

A. I didn't understand.

Q. How long have you known Mr. Balestreri?

A. Oh, about twenty years, I think.

Q. You first met Mr. Balestreri in jail, is that right?

A. That's right, when he was operated.

Mr. Riordan: I didn't hear the last.

A. When he was operated for ulcers.

Mr. Riordan: Are you able to hear? Will you read that, Mr. Reporter?

(Answer read by the reporter.) [93]

A Juror: Your Honor, we can't hear the witness.

The Court: Did you hear any of the testimony?

A Juror: Barely, and the last we missed a lot of it.

The Court: Read the testimony of the witness thus far.

(Testimony read by the reporter.)

Q. (By Mr. Burns): Mr. Chapman, would you kindly keep your voice up so that the ladies and gentlemen of the jury can hear you?

A. All right.

Q. You say you met Mr. Balestreri in jail some twenty years ago, is that right?

A. That's right, about twenty.

(Testimony of Abraham Chapulowitz.)

Q. Directing your attention, Mr. Chapman, to the year 1950, and the latter portion of that year, where were you residing?

A. I was in—Can I explain?

Q. Just tell me, what was your address? Where were you living in 1950, the latter portion? In San Mateo?

A. Either Daly City or San Mateo. I can't recall exactly. I think in San Mateo. I was living before in Daly City.

Q. You were married? A. Yes.

Q. And what was your wife's name?

A. Joy.

Q. Did you have any children?

A. No. [94]

Q. What was the address in San Mateo where you were living? A. 124 29th Avenue.

Q. Do you know Charles Schiffman?

A. Yes, sir.

Q. For what period of time have you known him? A. About twenty years.

Q. Did you have occasion in the year of 1950 to go to New York with your wife? A. I did.

Q. When was that?

A. Well, I can't remember the date exactly. Can't exactly remember the month. I went to New York with my wife. She wanted to see her father and I wanted to see my uncle.

Q. Did you on that occasion see Mr. Schiffman?

A. I did call him and I met him in the hotel and I talked to him.

(Testimony of Abraham Chapulowitz.)

Q. I show you Plaintiff's Exhibit 14 and ask you if you recognize that handwriting?

A. That is my handwriting.

Q. That is your address, is it not?

A. That is right. 124 29th Avenue.

Q. And the telephone number, are you familiar with that telephone number that appears to be there, a Juno number? A. I can't remember.

Q. Do you on that occasion of your visit to New York recall [95] giving your address to Mr. Schiffman in San Mateo, California?

A. I did give him my telephone number and my address.

Q. And your address? A. That's right.

Q. And in that period what business were you in, Mr. Chapman, if any?

A. Roofing and siding business.

Q. Roofing and siding business, is that right?

A. Yes.

Q. Now, did you, during the year 1950 have occasion to see Mario Balestreri? A. I did.

Q. Where was that? A. Early part.

Q. What?

A. That was early 1950. We was canvassing in San Jose, Santa Clara, Sunnyville, all over, me and a fellow by the name of King and his son. We was making—we were selling roof. We sold a lot of roofing, and we couldn't get the okay of the inspector. Some of the property was in bad shape and they wouldn't approve it.

Q. Well, Mr. Chapman, you were in the roofing

(Testimony of Abraham Chapulowitz.)

and siding business, is that right? A. Yes.

Q. And in the course of that business you saw Mr. Balestreri, [96] is that correct?

A. I did a few times, early in 1950.

Q. Did you and your wife ever visit Mr. and Mrs. Balestreri? A. A few times.

Q. Where was that?

A. I even went—I was invited to—in 1949, this was. You see, my wife, we were strangers like we didn't know too many people. I know Mr. Balestreri's wife, so we went over, was invited for Thanksgiving dinner over there and stopped that time on the way back.

Q. That was Thanksgiving of 1949, is that right?

A. Yes.

Q. Where were they living? A. Who?

Q. Mr. and Mrs. Balestreri.

A. They lived in San Jose.

Q. They were not living on a farm, were they?

A. No.

Q. How many times did you say you saw Mr. and Mrs. Balestreri during the year 1950?

A. I would say a few times. That is early 1950.

Q. Early in the year 1950? A. 1950.

Q. Do you know Harry Winkleblack?

A. Yes, sir. [97]

Q. When did you first know him?

A. Around, I believe, around January—January or December in 1951.

Q. December of 1950 or January of 1951, is that right?

(Testimony of Abraham Chapulowitz.)

A. Between them two months. I can't exactly remember the date.

Q. Did you ever introduce Mr. Harry Winkleblack to Mario Balestreri? A. No, sir.

Q. Were you ever in the company of Mr. Balestreri and Mr. Winkleblack at the same time?

A. No, sir.

Q. Did you, Mr. Chapman, at any time during the year 1950 or 1951 either purchase or sell narcotics to Mario Balestreri? A. No, sir.

Q. Did you ever advise Mr. Winkleblack that you were purchasing or selling narcotics to Mr. Balestreri? A. No, sir.

Q. Now, directing your attention specifically to the year 1951, Mr. Chapman, February 1st, did you have occasion in the company of Mr. Winkleblack to look for Mr. Balestreri in Tom's Bar in San Jose?

A. No, sir. I never even been in Tom's Bar even to see Balestreri. I didn't see Balestreri for a long time since after I put on the foundation. That must have been about between [98] seven or ten months before I met Winkleblack.

Q. Directing your attention again to February 1st, 1951, did you have occasion to look for Mr. Balestreri at the Hawaiian Gardens in San Jose?

A. No, sir.

Q. Did you have occasion to drive in the company of Mr. Winkleblack on February 1st, 1951, to the residence of Mr. and Mrs. Balestreri in San Jose? A. No, sir.

(Testimony of Abraham Chapulowitz.)

Q. Did you have occasion on that date, and at approximately ten o'clock p.m., to drive to a farm in San Jose? A. No, sir.

Q. Did you have any conversation with Mr. Balestreri—

A. (Interposing): I didn't even know where the farm is. I never did.

Q. Did you on February 2nd—

Mr. Riordan: Just a moment. Read the last answer, please.

(Answer read by the reporter.)

Q. (By Mr. Burns): Did you on the following day, February 2nd, meet by pre-arrangement with Mr. Balestreri at a supermarket in San Jose?

A. No, sir.

Q. Mr. Chapman, was there any time during the month of February or March, 1951, that you either negotiated the sale [99] or negotiated a purchase of any heroin for Mr. Balestreri? A. No, sir.

Q. I show you what purports to be a—I shouldn't say "purports." It is an exhibit in this case. I show you this exhibit, Mr. Chapman, and ask you if you have ever seen that before. A. I did.

Q. And in whose possession?

A. What do you mean, whose possession?

Q. Where did you see it? A. I got it.

Q. Where did you get it? A. I can't—

The Court: Speak up.

A. I can't answer that. I will incriminate myself.

(Testimony of Abraham Chapulowitz.)

Mr. Riordan: Are you taking a constitutional now?

Mr. Burns: Pardon me, could I address your Honor in reference to this matter?

The Court: Read that question and answer.

(Question and answer read by the reporter.)

Mr. Burns: I will withdraw the question.

The Court: What are you going to do about that?

Mr. Burns: I will withdraw the question. So the record may be clear about it, the record should show I have shown the [100] witness the pair of scales which are part of Exhibit 8. Is that right?

Mr. Riordan: That's right.

Mr. Burns: And I will withdraw the question and ask this question of Mr. Chapman:

Q. (By Mr. Burns): You have said you have seen those scales before, and I will ask you now, did you receive those scales from Mario Balestreri?

A. No, sir.

Q. Did you ever see those scales in the possession of Harry Winkleblack? A. I did.

Q. Where? A. In his home.

Q. I beg your pardon? A. In his house.

Q. Where was that house?

A. Burlingame.

Q. In Burlingame? A. In Burlingame.

Q. Directing your attention to March 23rd, 1951, Mr. Chapman, in the a.m. hours of that day, did

(Testimony of Abraham Chapulowitz.)

you have occasion to see Mario Balestreri in San Mateo? A. No, sir.

Q. At the Andrew Williams store? [101]

A. No, sir.

Q. Did you either negotiate the sale or negotiate the purchase of any narcotics from Mr. Balestreri on that day? A. No, sir.

Q. Now, Mr. Chapman, you were detained by the authorities on that day in Burlingame, were you not?

A. I think it was. I couldn't remember exactly the date.

Q. If I refresh your recollection by telling you that was the date that Mr. Winkleblack was arrested in San Leandro, would that refresh your recollection that you were—— A. Yes.

Q. ——detained——

A. I was in custody that afternoon.

Q. In Burlingame, California?

A. That is right.

Q. And you were taken into custody at the home of Mr. Harry Winkleblack, is that right?

A. That is right.

Q. Now, Mr. Chapman, you know Mr. Balestreri, do you not?

A. I do know Mr. Balestreri, that is right.

Q. Do you know his wife, Mrs. Balestreri?

A. Yes.

Q. You say you don't know nor have you ever seen the defendant, Joseph Littman?

A. Never did. [102]

(Testimony of Abraham Chapulowitz.)

Q. Did you ever address any letters to the defendant, Littman?

A. I addressed no letters. When I addressed, I wrote to Charley Schiffman, I used to send presents to Charlie in Joe Littman's name.

Q. I show you here some sport shirts, Mr. Chapman, being Plaintiff's Exhibit 12, and ask you if you can recognize those garments?

A. Looks like some shirts I sent.

Q. It looks like shirts similar to those you sent, is that right? A. That is right.

Q. And how did you address it?

A. I addressed it to Mr. Littman, and also put in the place to give it to Charlie Schiffman.

Q. Who furnished you with the address of Mr. Littman?

A. Charlie, in New York. I will explain. Mr. Schiffman was upon conditional release, and when I said would I send him a present, and he didn't want me, you know, not to send it to his home in case anything, I shouldn't put them in the middle. He said, "You can send it to this address," to make the arrangement.

Q. And he gave you the address of Joseph Littman, in Patterson, New Jersey, is that right?

A. That is right.

Q. Mr. Chapman, you were arrested in April of 1951, is that correct? [103]

A. That's right.

Q. And placed in custody? A. Yes.

Q. You have been in custody ever since?

(Testimony of Abraham Chapulowitz.)

A. That is right.

Q. After your arrest did you have occasion to instruct your wife to go to New York and look for Charlie Schiffman?

A. When I was arrested——

The Court: Can't you answer yes or no?

A. Yes. Yes. I am sorry, your Honor.

Q. (By Mr. Burns): And what instructions did you give to your wife, if any, with reference to how she should locate Mr. Schiffman?

A. I gave her Schiffman's address and I gave her Mr. Littman's. I said, "If you can't find him over there, call him, this is a friend of Charlie's, and have Charlie come to see you."

Q. And you furnished the address of Mr. Joseph Littman in Patterson, New Jersey, to your former wife, Joy Chapman?

A. That is right.

Q. Now, Mr. Chapman, as you say, you were arrested in April of 1951 in connection with violation of the narcotic laws, is that right?

A. That is right.

Q. And you were engaged in the narcotic traffic with Harry Winkleblack, is that correct? [104]

A. No, sir.

Q. To whom did you sell narcotics or from whom did you receive narcotics in San Jose?

A. I can't answer that question. I will incriminate myself.

The Court: I can't hear and neither can the Jury.

(Testimony of Abraham Chapulowitz.)

A. I can't answer that question on account of I will incriminate myself.

Mr. Riordan: Would you read the question, the last two or three questions and answers?

(Whereupon portion of testimony read by the Reporter.)

The Court: What do you want to do about that?

Mr. Burns: I want to do this about it, your Honor, and I am very earnest about this matter: Mr. Balestreri is on trial on a very serious charge. I think we are entitled to produce whatever evidence we can produce concerning his innocence.

The Court: Well, you have asked a question of a witness that you have produced that requires him to testify on a subject—The question implies he had narcotic transactions with someone in San Jose.

Mr. Burns: That is correct.

The Court: He refuses to answer the question on the ground it would incriminate him. Of course it doesn't take any great legal acumen to determine that question. Whether he is a convicted felon or not he still has the right to refuse to [105-106] answer questions that would involve him in some other crime.

Mr. Burns: It isn't our purpose to incriminate him or degrade him, you understand that, your Honor.

The Court: I understand. He has refused to answer your question and I will have to sustain his right to refuse to answer that question.

(Testimony of Abraham Chapulowitz.)

Mr. Burns: I understand.

The Court: Whether he is a witness in this case or not.

Mr. Burns: I will withdraw the question, and ask you again, Mr. Chapman:

Q. Did you at any time in San Jose or any place else ever sell or purchase from Mario Bales-treri any narcotics? A. No, sir.

Mr. Riordan: I object to that as having been asked and answered.

The Court: Well, he answered it again.

Q. (By Mr. Burns): Your answer was——

The Court: Was "No."

Q. (By Mr. Burns): Did you in the town of San Jose or some other place purchase or sell narcotics?

Mr. Riordan: I object to that.

The Witness: I am going——

Mr. Riordan (Interposing): Outside the scope of the case. Incompetent, irrelevant and immaterial.

Mr. Burns: I should say it isn't, with reference to this [107] matter. That question can be answered without incriminating himself.

The Court: Well, I will sustain the objection. It is a question that has nothing to do with the matter you have been inquiring about. You asked the witness whether or not he had a transaction with the defendant and he said no. It doesn't have anything to do with it to develop the fact that he had a transaction some place else.

Mr. Burns: Well, it may, your Honor.

(Testimony of Abraham Chapulowitz.)

The Court: Sustain the objection.

Mr. Burns: That is all, Mr. Chapman.

The Court: Do you wish to take a recess?

Mr. Riordan: Recess, your Honor?

The Court: Ladies and gentlemen, we will take the morning recess.

(Short recess.)

Cross-Examination

By Mr. Riordan:

Q. Mr. Chapman, you said you have been convicted before of violation of the Narcotic Acts, is that correct? A. That is right.

Q. And you were convicted in Chicago, Illinois, in 1930 for violation of the Harrison Narcotic Act?

A. That is right. [108]

Q. Sentenced to eight years?

A. That is right.

Q. And you were convicted in 1938 in New Orleans of violating the Federal Narcotics Act?

A. That is right.

Q. Sentenced to four years?

A. That is right.

Q. You were convicted in 1940 in Texas for violation of the Narcotic Laws?

A. That is right.

Q. And sentenced to eight years?

A. That is right.

Q. Then you were convicted here in San Francisco for violation of the Narcotic Laws?

(Testimony of Abraham Chapulowitz.)

A. That is right.

Q. And you are serving a fifteen year sentence?

A. That is right.

Q. At the time you were convicted in 1951 for violation of the Narcotic Laws here in San Francisco you were a parolee, is that correct?

A. Not a—on probation.

Q. You were on probation?

A. I was on conditional release.

Q. That was a conditional release from Fort Worth, Texas?

A. That is probation. And I pled guilty in the Court. I [109] wasn't tried. I was guilty and I pled guilty.

Q. That was here you pled guilty?

A. Yes.

Q. In San Francisco, before Judge Goodman?

A. No, sir.

Q. Judge Murphy? A. Judge Murphy.

Q. In the United States District Court for this district? A. That is right.

Q. By the way, you were represented by an attorney, though, at that time? At the time you pled guilty here in San Francisco in 1951 for conspiring to violate the Narcotic Laws you had an attorney?

A. Yes, sir.

Q. You weren't tried? You pleaded guilty to the conspiracy charge, is that correct?

A. I pleaded guilty. I was guilty and I pleaded guilty.

Q. You were guilty and you pleaded guilty?

(Testimony of Abraham Chapulowitz.)

A. Pleaded guilty.

Q. At the time you were convicted in Fort Worth, Texas, for violation of the Narcotic Laws in 1940, did you stand trial or did you plead guilty?

A. Stood trial.

Q. Stood trial? And that was a conspiracy to violate the Statute? [110]

A. That is right.

Q. Among the conspirators was Charles Schiffman is that right?

A. That is right.

Q. And one of the other of those conspirators was Earl Nettich?

A. Earl Nettich? I don't remember if he was.

Q. Was he among the conspirators that were convicted?

A. I don't believe so. I don't think so.

Q. You don't know? A. I don't think so.

Q. Did you know a man named Earl Nettich?

A. I met him in the institution.

Q. You met him how?

A. In an institution.

Q. In an institution? A. Yes.

Q. You mean a penitentiary?

A. That is right.

Q. After your conviction in Forth Worth, Texas, in 1940, you and Schiffman went to the same institution? A. Schiffman?

Q. You and Schiffman.

A. Yes. I met him at the same institution, Leavenworth.

Q. You were convicted for the same conspiracy?

A. That is right. [111]

(Testimony of Abraham Chapulowitz.)

Q. Now, did you meet Nettich in the same institution—Earl?

A. I saw him in the institution, but I don't believe he was under conspiracy in Texas.

Q. Was it under the same indictment that you were charged? A. I don't believe so.

Q. You don't believe so?

A. I don't think so.

Q. Now, you testified to sending gifts to Charles Schiffman. A. I did.

Q. What was the reason for that?

A. When I was in New York he used to send me some white shirts, underwear, and like sport-shirts—Jackman's. I used to send them to him for presents.

Q. I don't quite understand. He used to send you presents?

A. Yes. We were friends and he used to send me shirts, underwear, and I sent him some Jackman shirts.

Q. Did he send you any narcotics?

A. No, sir.

Q. Now, Mr. Chapman, you know he pleaded guilty to the same conspiracy you pleaded guilty to.

Mr. Burns: That is a misstatement of the fact.

Mr. Riordan: What?

The Court: Chapman is not named as a defendant in this suit. [112]

Q. (By Mr. Riordan): You are named as a co-conspirator in this indictment, is that right?

A. I don't think even I am indicted in it.

(Testimony of Abraham Chapulowitz.)

Mr. Burns: Well, your Honor can strike that out.

The Court: It may go out.

Q. (By Mr. Riordan): Charles Schiffman sent you presents of white shirts? A. Yes.

Q. What were they for? Just a present?

A. That is right.

Q. How many presents did he send?

A. Oh, a few.

Q. What do you mean by a few?

A. Couple of dozen.

Q. On how many occasions?

A. About three. Two or three.

Q. Two or three? And the total number of shirts being maybe a couple of dozen?

A. That's right. Also sent a lady's bag for my wife—my ex-wife.

Q. Your ex-wife? Now, you reciprocated by sending presents to Charles Schiffman?

A. I do. I always send a present.

Q. Always send a present? How many presents did you send to Schiffman? [113]

A. I couldn't remember exactly, but—I couldn't remember the number, how many presents I send him.

Q. Approximately?

A. Maybe six, maybe five, maybe more. I can't remember.

Q. Five or six different packages?

A. Shirts, yes.

(Testimony of Abraham Chapulowitz.)

Q. Is that the total number of shirts or total number of packages you sent him?

A. No, I sent a few more shirts, five or six packages—boxes.

Q. Five or six boxes?

A. I bought them and I sent them away to him.

Q. Five or six different times?

A. I will say that. [114]

Q. How many shirts in each box, generally?

A. Maybe one or two.

Q. One or two? Would there be anything else in the shirt when you mailed it?

A. No, sir.

Q. Did you mail him any money?

A. No, sir.

Q. Never mailed him any money?

A. No, sir.

Q. Where did you buy the shirts?

A. Different places.

Q. Did you buy them at Bixley's in San Mateo?

A. I did.

Q. What type shirt did you send him?

A. Sport shirts.

Q. Sport shirts? What make or model? Jackman's?

A. Yes, Jackman's. Gabardine shirts.

Q. Made by Jackman?

A. I think so.

Q. Did you buy any shirts that you sent to Charles Littman at Siegels in Oakland?

A. To Charlie Schiffman?

Q. Yes.

A. I bought from Siegels in Oakland.

Q. On several occasions? [115]

(Testimony of Abraham Chapulowitz.)

A. On several occasions. I was buying my clothes over there.

Q. And you bought Jackman shirts to send Charles Schiffman?

A. I bought some shirts there to send Charles Schiffman.

Q. This four or five times you sent shirts as presents to Charles Schiffman, over what period of time was this? A couple of months? Three months?

A. No, not that long.

Q. Two months?

A. Maybe a couple of months or a month.

Q. A couple of months you sent these gifts to him?

A. I couldn't remember exactly the weeks or months.

Q. Maybe three months?

A. I couldn't exactly say.

Q. What was the reason for sending him five or six gifts of shirts in a period of two or three months. You were very good friends?

A. We were friends.

Q. Good friends?

A. I sent it to him for a present to give to his brother or family. He asked me, "You know, they like them shirts." I said, "Any time you want some I will send it to you."

Q. "Any time you want some, you will send them"? You addressed the packages, though, to Joseph Littman? A. You see, I explained—

(Testimony of Abraham Chapulowitz.)

The Court: No, he just wants to know whether you did. [116]

Q. (By Mr. Riordan): I am not asking for an explanation.

The Witness: I did address to Joe Littman, and I put in to please give it to Charles Schiffman.

The Court: You put in——?

A. A piece of paper, to give it to Charlie Schiffman.

The Court: You put a piece of paper in the box?

A. Yes.

Q. (By Mr. Riordan): You put a piece of paper inside the box?

A. Like a card. I put it in to please give that to Charlie Schiffman.

Q. Well, then, now did Charles Schiffman open the package or did Joe Littman? Do you happen to know who opened the packages?

A. I couldn't tell you that. I don't know.

Q. Now, did you also write letters to Charles Schiffman? A. I did.

Q. Did you write him or have someone else write him for you? A. I did myself.

Q. Well, as a matter of fact you don't write very well, do you?

A. I write the best I could.

Q. The best you could? A. Yes.

Q. A number of times you did have other people write him for you?

A. Oh, once in a while. [117]

Q. Once in a while? Now, when you mailed

(Testimony of Abraham Chapulowitz.)

these packages, did you write the address of Joseph Littman, Patterson, New Jersey, on the box for mailing? A. Sometimes I did.

Q. Sometimes? A. Yes.

Q. Most of the time you would have somebody else do it for you, wouldn't you?

A. I had the clerk where I bought the shirts to put it on.

Q. Like over at Siegels, you would have the clerk do it? A. That is right.

Q. But you would do the mailing?

A. I did.

Q. Not the store? You never asked anybody down at Bixley's to write the name on the package, did you? A. I couldn't remember that.

Q. Do you remember asking a Mr. and Mrs. Michaels to write it? A. Who?

Q. Mr. and Mrs. Michaels.

A. I don't know them.

Q. Do you know where the post office is in San Bruno, San Mateo County, California?

A. Yes, sir.

Q. You have mailed some of those packages from there? A. Yes. [118]

Q. Do you remember a little stationery store next door? A. That is right.

Q. Do you know the name of the people who owned the little business?

A. I couldn't tell you their name?

Q. You asked sometimes a lady in there and

(Testimony of Abraham Chapulowitz.)

sometimes a man to prepare your package, didn't you? A. I did.

Q. And also asked them to write on it for you the name of the addressee, Joseph Littman, Patterson, New Jersey?

A. I had them to make the package, and I took one of them slips and put on it and I sent it.

Q. Did you put the name on?

A. Most of the time I did.

Q. This was at Michael's—Oh, by the way, this store, this little stationery store, the people who ran it were man and wife called Mr. and Mrs. Michaels, does that refresh your recollection?

A. I don't know their name.

Q. But you remember going into the store?

A. That is right. Next to the post office.

Q. That's right. They would wrap the packages for you at your request. A. Yes.

Q. Is it your testimony in this little stationery store that [119] on those occasions you would write the name of Joseph Littman, Patterson, New Jersey?

A. I wrote, and once when I couldn't write it out straight, I asked him, you know, to print it.

Q. You asked him to do it once?

A. I did so.

Q. The other times you did it?

A. That is right.

Q. The only time you ever asked them to do it, once was, you say, you couldn't write straight?

A. I had it printed.

(Testimony of Abraham Chapulowitz.)

Q. Now, you were going to explain to me the reason why you sent the packages for Charles Schiffman to Joseph Littman. You said Charlie asked you to do that?

A. Absolutely, on account of his, you know, he didn't want his family, you know, to send the package—you know, when a man is on conditional release, they don't think anything—in other words, he was on conditional release and I was on parole, and he didn't want anything to happen to put us in together like I am doing anything with the man.

Q. Oh, I see. That is the reason you sent those to Charles Schiffman to pass to——

A. To Joe Littman to give to Charles Schiffman.

Q. Yes, Joe Littman to give to Charles Schiffman. A. That is right. [120]

Q. And you did that, as I understand it, because you didn't want to send packages directly to Charles Schiffman? A. That is right.

Q. Then how did you know Joseph Littman?

A. I never knew the man.

Q. You just told me you did——

A. (Interposing): I never saw the man. I don't know him.

Q. How did you know to send it to Joe Littman?

A. I told you, he told me, Charlie Schiffman in New York, and he gave me his address.

Q. Oh, you met him in New York and he told you how to send it?

A. I met Charlie Schiffman in New York at the

(Testimony of Abraham Chapulowitz.)

hotel and he told me, he said, "Any time you want to send me, send it to this address."

Q. "To this address," is the address of Joseph Littman?

A. To send it to Charlie. I sent to Joe Littman to give to Charlie.

Q. You never addressed the package "Charles Schiffman, c/o Joseph Littman," did you?

A. I don't think so.

Q. You know so?

A. I am not positive.

Q. That's right?

A. The only thing I put on was to give it to him. [121]

Q. Is that all you ever sent to Charles Schiffman was the shirts? A. That is right.

Q. You never sent anything else in it? Money?

A. No, sir.

Q. That is all you sent was shirts?

A. Shirts.

Q. What about pots and pans?

A. I sent pots and pans.

Q. You didn't send it to Joseph Littman?

A. I sent it to his sister.

Q. And they sent them back to you? Did his sister send them back to you?

A. I don't know.

Q. Did Charles Schiffman ever send the shirts back to you?

A. He sent me back—Charlie Schiffman sent me

(Testimony of Abraham Chapulowitz.)

back some shirts that were too big and I went over and changed them.

Q. You went over where and changed them?

A. Where I bought them.

Q. Where you bought them?

A. At Siegels.

Q. You took shirts back to Siegels because they were too big?

A. And I sent my father-in-law, too, shirts in New York—Mr. Butler.

Q. Now, you had—Oh, let me ask you this: Did you ever [122] talk with Mr. Burns, attorney for the defense here, prior to coming into Court.

A. What do you mean?

Q. Did you ever have a conversation with Mr. Burns prior to coming into Court today?

Mr. Burns: I will stipulate that he has, Mr. Riordan.

Mr. Riordan: Would you read the question, please.

(Question read by the reporter.)

A. Today? No.

The Court: He said prior to coming into Court.

A. I sent for Mr. Burns when I came into the county jail. I wanted him to take care of my community property.

The Court: All he asked you was, did you ever have a conversation with him.

A. Oh, I talked to him.

The Court: The answer is "yes."

(Testimony of Abraham Chapulowitz.)

Q. (By Mr. Riordan): When?

A. I saw him yesterday.

Q. Did you see him before yesterday?

A. About three weeks ago.

Q. That was before you testified in the Rogers trial?

A. That's right.

Q. And you also discussed with Mr. Burns some of your personal problems, is that right? [123]

A. Yes.

Q. Community property, did you say?

A. Yes.

Q. Mr. Burns showed you Plaintiff's Exhibit 14. That is your address on the top?

A. That is right.

Q. Do you know the phone number?

A. I couldn't remember.

Q. Could it be Uncle Tom's Cabin?

A. It could.

Q. You received telephone calls in Uncle Tom's Cabin, didn't you?

A. I did.

Q. You received calls from the east to Uncle Tom's Cabin?

A. I think I did.

Q. In fact, you gave their telephone number, the telephone number of Uncle Tom's Cabin to Charles Schiffman?

A. I did not.

Q. You didn't? Did you receive telephone calls from Charles Schiffman?

A. I did.

Q. Where did you receive them?

A. Different places. Hotels. St. Francis Hotel, the telephone booth.

Q. And a bar down on Hyde Street? [124]

(Testimony of Abraham Chapulowitz.)

A. No, sir.

Q. No? A. No.

Q. Did you receive calls from Schiffman in Bondy's restaurant in Belmont?

A. I received—I received—I think I did receive some at Bondy's restaurant.

Q. How did Schiffman know where to get in touch with you?

A. I told him. I wrote him a letter to get in touch with me and phone me at that hour.

Q. He got in touch with you because you wrote a letter to Littman?

A. To Charles Schiffman, it was.

Q. You wrote it to Littman?

A. I wrote Charles Schiffman at his house.

Q. So what did you ask? For Charlie Schiffman to ring you up at a certain hour, certain date?

A. I did.

Q. Why didn't you receive it at home?

A. I didn't want to talk at home.

Q. Why? You were talking about narcotics business? A. I did not.

Q. Why? Can't you answer?

A. The only time——

Mr. Burns: I object to this argument with the witness. [125]

A. The only time I talked to Charles Schiffman is because I tried to raise some money. And I also talked to Mr. Wexler about it.

Q. That is Waxey Gordon?

A. That's right.

(Testimony of Abraham Chapulowitz.)

Q. You know the Winner's Circle, don't you? The Winner's Circle in San Mateo County? Isn't that a bar right down the street from your house?

A. Yes.

Q. Across the street from the race track? Did you receive phone calls there? A. No, sir.

Q. Did you make phone calls from there?

A. I made some.

Q. Now, you know Oliver's restaurant, don't you? A. I do.

Q. Did you receive phone calls there?

A. That's right.

Q. Were those from Charles Schiffman?

A. Pardon me?

Q. Did you receive them from Schiffman in Oliver's restaurant in South San Francisco?

A. No, sir.

Q. Who were the phone calls from? They were long distance calls? [126]

A. Some long distance from New York.

Q. Were they from Waxey Gordon?

A. That's right.

Q. Now, when you were arrested, you told your former wife to go east to see Charlie Schiffman, didn't you? A. That is right.

Q. You told her not to tell anybody? "Don't let anyone know you are going east," you told her?

A. That is right.

Q. You told her, "When you get back there to send a telegram to Joseph Littman to contact Charles Schiffman"?

(Testimony of Abraham Chapulowitz.)

A. I didn't know she sent that telegram. I gave her Charles Schiffman's address and also I gave her Mr. Littman's. I said, "If you can't find him home, you may check up his number rather directly. Call Mr. Littman and tell him you want to get in touch with Mr. Schiffman right away."

Q. You never received any of these long distance calls in your own home in San Mateo, did you?

A. A couple from Mr. Wexler, and a telegram, too.

Q. Did your former wife know you were in the narcotics business? A. Never did.

Q. You had a partnership with McKee and William Levin, is that right? A. That is right.

Q. And the nature of the partnership was for the narcotics [127] business?

A. That is right.

Q. You testified you had seen these scales before? A. I did.

Q. You gave them to Winkleblack?

A. That is right.

Q. What were they to be used for?

A. I can't answer. I would incriminate myself.

Q. Where did you get the scales?

A. I can't answer that.

Q. Why? A. I would incriminate myself.

Q. All right, did you get the scales in San Jose?

A. I did.

Q. Have you seen those blue cans before with the label; "milk sugar"? A. I think I did.

Q. Where? In Winkleblack's apartment?

(Testimony of Abraham Chapulowitz.)

A. That is right.

Q. I will show you the contents of Plaintiff's Exhibit 8 and ask you to examine that. Are the contents thereof familiar to you?

A. I can't answer that.

Q. Why? A. Incriminate myself. [128]

Q. Oh. I show you these cellophane bags. Were they used to pass narcotics?

A. I can't answer that. I will incriminate myself.

Q. Were those manila envelopes used to pass narcotics in?

A. I can't answer that. I would incriminate myself.

Q. I show you Plaintiff's Exhibit 7. Can you recognize that or identify it? You are shaking your head, so I presume your answer is no?

A. No.

Q. Did you sell narcotics to a man named Harry Weimer? A. I did.

Q. Did you sell narcotics to McKee and Levin?

A. I did not.

Q. You did not? A. I didn't sell them.

Q. Did McKee and Levin sell you any narcotics?

A. I can't answer that.

Q. Why?

A. Two wrongs don't make a right.

Mr. Riordan: Repeat the question, Mr. Reporter.

The Court: That is not an answer.

A. I can't answer that.

Q. (By Mr. Riordan): All right. That will in-

(Testimony of Abraham Chapulowitz.)

criminate you? Where did you get the narcotics you sold Weimer?

A. I can't answer that. [129]

Q. Why? A. The fifth amendment.

Q. As a matter of fact, you got the narcotics you sold to Weimer from Mario Balestreri?

A. That is not a question.

Q. Where did you get the narcotics?

A. I can't answer that.

Q. The narcotics you sold to Weimer you got in the City of San Jose? A. I did.

Q. You got it outside the Chinese supermarket on Second Avenue in San Jose, didn't you?

A. I did.

Q. You also got narcotics in the vicinity of the William Andrew's supermarket in San Mateo?

A. I did.

Q. You also got narcotics several times at the Chinese supermarket in San Jose?

A. No, sir.

Q. On one occasion?

A. One occasion. And I would say this—

Q. No. A. I am sorry.

The Court: What did he say?

(Portion of testimony read by the reporter.)

The Court: Well, he didn't say anything.

Q. (By Mr. Riordan): You also received narcotics at the gasoline station on Bayshore Highway in Redwood City? A. I did.

Q. From Mario Balestreri?

(Testimony of Abraham Chapulowitz.)

A. No, sir, never did.

Q. All right, you gave—you delivered narcotics to Mario Balestreri? A. Never did.

Q. Do you know where the Benjamin Franklin Hotel is? A. That's right.

Q. Where? A. San Mateo.

Q. You gave narcotics to Mario Balestreri there?

A. Absolutely not, and that is the truth.

Q. I should hope it is.

Mr. Burns: Your Honor, I move to strike the United States attorney's remark.

The Court: What is that?

Mr. Burns: I make a motion that the United States' attorney's remark be stricken. I don't know whether it was heard or not.

The Court: What is the record?

(Whereupon the reporter read, "I should hope it is.")

The Court: Well, the jury will disregard it. [131]

Q. (By Mr. Riordan): You had narcotic dealings with Harry Winkleblack? A. I did.

Q. Harry Winkleblack delivered narcotics for you? A. He did.

Q. Harry Winkleblack wrote letters for narcotics for you? A. No, sir.

Q. Harry Winkleblack received narcotics for you? A. I refuse to answer that.

Q. Why? A. Incriminate myself.

(Testimony of Abraham Chapulowitz.)

Q. Mrs. Harry Winkleblack received narcotics for you in San Leandro?

A. I refuse to answer on incrimination.

Q. He received narcotics for you in his home in San Mateo?

A. I refuse to answer on the fifth amendment.

Q. Winkleblack did drive you to meet Balestreri?

A. No, sir, never did. I didn't see the man for near ten months before I met Winkleblack.

Q. Do you know that Winkleblack identified Mario Balestreri in Court here?

A. If he did, he is a liar, and that is the truth, and I can prove it.

Q. For whom did you buy those narcotics?

A. I can't answer that. [132]

Q. Did you borrow two thousand dollars from a man named Russell Varsi in San Mateo?

A. I did.

Q. Did you use the money to buy narcotics?

A. I can't answer that. I didn't know I can borrow \$2,000.00 to buy narcotics.

Mr. Riordan: I ask that that be stricken out. It isn't responsive to the question.

The Court: It may go out.

Q. (By Mr. Riordan): What did you do with the \$2,000.00?

The Court: Well, this cross-examination is getting rather far afield.

Mr. Riordan: All right, your Honor.

(Testimony of Abraham Chapulowitz.)

Q. (By Mr. Riordan): Well, let me ask you one question: Who did you give the \$2,000.00 to?

A. Levin.

Q. Levin or McKee? A. Levin.

Q. Do you know a man named Joe Oliver or Joe Olivero? A. I do.

Q. And he is the brother-in-law of Mario Bales-treri? A. That is right.

Q. Did you purchase narcotics from Joe Oliver?

A. Never did.

Q. Did you ask Winkleblack to write [133] letters?

A. Never did. That is the truth. The only time I saw Mr. Oliver is once when we went out for dinner. It was in 1949.

Q. Do you know Mike Peccini? A. I do.

Q. Did you sell narcotics to Mike Peccini?

A. I did.

Q. How much?

A. I think five ounces to Peccini.

Q. Five ounces? A. Yes.

Q. And you received money from Mike Peccini, is that right? A. I did.

Q. Did you know Mike Peccini was a Govern-ment agent? A. No, sir.

Q. Did you learn after you sold narcotics to him that he was a Government agent?

A. No, sir.

Q. Do you know Joe Pitta?

A. That's right.

Q. Did you sell narcotics to him?

(Testimony of Abraham Chapulowitz.)

A. I sold to both of them.

Q. Where did you get those narcotics?

A. I can't answer that.

Q. Did you get them from San Jose?

A. No, sir. [134]

Q. Did you sell narcotics to Edward Sahati?

A. I can't answer that.

Q. Woody Zaine?

A. I refuse to answer on the grounds of incrimination.

Q. Meyers? A. (No audible response.)

Q. Do you know that Joe Olivero plead guilty to conspiracy in this case?

A. I read in the paper.

Mr. Riordan: No further questions.

Mr. Burns: I have a few questions.

Redirect Examination

By Mr. Burns:

Q. Mr. Chapman, you say that you negotiated a sale of narcotics at a supermarket in San Jose, is that correct?

A. I got the narcotics over there.

Q. You received some narcotics?

A. Yes, but I never received none from Mr. Balestreri.

Mr. Riordan: I ask that that be stricken as not responsive to the question.

The Court: It may go out.

Q. (By Mr. Burns): Was Mr. Winkleblack with you? A. He was.

Q. And in whose car were you? A. In his.

(Testimony of Abraham Chapulowitz.)

Q. What day was it? [135]

A. I think it was in February. I couldn't remember exactly the day.

Q. Do you recall that it was February 2nd, 1951?

A. It may be. I couldn't—you know, I can't explain exactly the date of it. I couldn't remember exactly the date.

Q. Do you recall, Mr. Chapman, that the evening before that you had arranged to receive those narcotics in San Jose?

Mr. Riordan: I object to that as leading the witness, your Honor.

Mr. Burns: He was going into it in his cross-examination. I just want to develop the facts. Your Honor can appreciate the position we are in.

The Court: Well——

Mr. Burns: Well, I will withdraw the question.

The Court: I don't know what you mean by that.

Q. (By Mr. Burns): Mr. Winkleblack was with you in San Jose at the supermarket when you received the narcotics, was he?

A. That is right.

Q. And to the best of your recollection it was in February, 1951, is that correct?

A. That is right.

Q. Did you have any negotiations prior to the time you received those narcotics?

A. I don't believe so.

Q. You didn't make arrangements the evening before in San Jose [136] to meet somebody at the supermarket?

A. No.

(Testimony of Abraham Chapulowitz.)

Mr. Riordan: I object to this as asked and answered.

The Court: He said no.

A. No, sir.

Q. (By Mr. Burns): You didn't receive those narcotics from Mario Balestreri?

A. No, sir, Mr. Burns, and that is the truth.

Q. Mr. Riordan asked you about a filling station on Bayshore Highway in Redwood City. Did you receive narcotics there?

A. I did receive narcotics there.

Q. You didn't receive it from Mario Balestreri?

A. I never got it from Mario Balestreri. His wife was even in the car, Mr. Winkleblack's, and you can ask her.

Q. Do you recall when you received those narcotics? Was it Washington's Birthday of 1951, February 22nd?

A. I can't remember exactly the day.

Q. Do you recall what time of day?

A. It was late at night.

Q. Do you recall in the first part of February when you received narcotics at the supermarket, what time of day it was?

A. It was on a Saturday.

Q. And what time of day, Mr. Chapman?

A. It should be around afternoon of Saturday.

Q. Do you recall when it was that you saw these scales that [137] have been marked as part of Exhibit 8?

(Testimony of Abraham Chapulowitz.)

A. I think the early part of January.

Q. In January?

A. Yes. I can't remember exactly. I just want to make sure, you know. I don't know.

The Court: Just answer the question.

A. I can't remember.

Q. (By Mr. Burns): You can't remember?

A. Not exactly.

Q. You don't believe it was in March?

Mr. Riordan: I object to counsel leading the witness.

The Court: Sustained.

Q. (By Mr. Burns): Was it prior or after the time you had been to the supermarket in San Jose?

A. I think it was after.

Q. It was after? A. Yes.

Q. And you believe you were at the supermarket sometime in February? A. That's right.

Q. What time of day did you receive those scales? A. In the morning.

Q. Now, do you recall March 15th of 1951, the date that you are supposed to pay income taxes?

A. I do. [138]

Q. Were you in San Jose on that day?

A. I was in San Jose but I never did anything.

Q. Did you purchase a ring? A. I did.

Q. Where? A. From Mr. Don Levin.

Q. What time of day?

A. That was around two o'clock and from there I went to the market.

Q. On the morning of March 23rd, 1953, were

(Testimony of Abraham Chapulowitz.)

you at the Andrew Williams store in San Mateo?

A. I couldn't remember that.

Q. You don't recall? A. I can't recall.

Q. Do you recall being at the Andrew Williams store at any time?

Mr. Riordan: I object to that.

A. I do go in and buy.

Mr. Riordan: He says he can't remember it and now he is telling him to remember it.

Mr. Burns: I am not telling him to remember anything.

Q. (By Mr. Burns): Now, at any time you were in any part of San Mateo County, or any other place in the United States, in 1951 did you have any narcotic transactions with Mario Balestreri? [139]

A. No, sir, never did.

Mr. Burns: That is all.

Recross-Examination

By Mr. Riordan:

Q. Mr. Chapman, did you lose the ring you bought that day? A. I did.

Q. Did you go back to see Levin about it?

A. What?

Q. Did you go back and see Levin about it?

A. I saw his wife. Mr. Levin wasn't there when I come back.

Mr. Riordan: That is all.

Mr. Burns: That is all.

(Witness excused.)

HARRY IKEMOTO

a witness called on behalf of the defendants, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Will you please state your name to the Court and to the jury?

A. Harry Ikemoto.

The Clerk: Will you spell your last name?

A. I-k-e-m-o-t-o. [140]

Direct Examination

By Mr. Burns:

Q. Mr. Ikemoto, where do you reside?

A. In San Jose.

Q. For how long have you resided there?

A. In this particular residence?

Q. Yes. A. About eighteen months.

Q. Do you know the defendant, Mario Balestreri?
A. Yes.

Q. How long have you known him?

A. Oh, about eight years.

Q. And where have you known him?

A. While I was in confinement.

Mr. Biordan: I didn't get the last answer.

(Answer read by the reporter.)

Q. (By Mr. Burns): That is, during the war?

A. Yes.

Q. In the relocation center for Japanese, is that right?
A. Yes.

Q. Do you know Mr. Balestreri's occupation at the present time?
A. Yes.

(Testimony of Harry Ikemoto.)

Q. What is it? A. Strawberry grower.

Q. Where is his farm located? [141]

A. In Santa Clara.

Q. Are you familiar with that farm?

A. Yes.

Q. In what way are you familiar with it?

A. We were in partners there at first.

Q. Where is the farm located specifically?

A. On Woodland Lane.

Q. How far from San Jose is that?

A. Oh, about ten, eleven miles.

Q. Directing your attention to February, 1951, where did you reside then, Mr. Ikemoto?

A. On the farm.

Q. And with whom were you residing?

A. My wife and boy.

Q. And that is the same farm Mr. Balestreri now operates? A. Yes.

Q. And where he now resides? A. Yes.

Q. In February, 1951, where was Mr. Balestreri residing, do you know? A. In San Jose.

Q. At a residence there? A. Yes.

Q. Directing your attention specifically to February 1st, 1951, did you have occasion to have a call from two persons [142] in the evening at that farm?

A. No.

Q. Did you see anyone at that farm?

A. No.

Q. Was Mr. Balestreri at the farm at ten o'clock that evening? A. No.

Q. Now, was Mr. Balestreri working at the

(Testimony of Harry Ikemoto.)

farm during the day? A. Yes.

Q. And every day? A. Yes.

Q. Directing your attention to February 22nd, 1951, Washington's Birthday, did you see Mr. Balestreri on that day? A. Yes.

Q. How is it impressed on your recollection that you saw him that day?

A. We were negotiating buying a tractor.

Q. Where was that? A. In Santa Clara.

Q. Where? From whom?

A. Dr. Wilcox.

Q. Will you tell the ladies and gentlemen of the jury what you mean by negotiating for the purchase of a tractor?

A. We were going to buy it. [143]

Q. How did you go about doing that, Mr. Ikemoto?

A. We brought the money with us to back it up, but he wanted cash, so we just looked at the tractor, looked the tractor over, rode around testing it out, and then come back.

Q. You were with Mr. Balestreri during all that day? A. Yes.

Q. Where is Dr. Wilcox presently located?

A. I think over on Pipe Road in Santa Clara.

Q. Did you negotiate for and finally succeed in purchasing the tractor? A. Yes.

Q. When and where? A. On the 23rd.

Q. February? A. Yes. We picked it up.

Q. During the evening of February 22nd, did you have occasion to see Mr. Balestreri?

(Testimony of Harry Ikemoto.)

A. Well, after going to this Wilcox farm, we come back and puttered around until two or three o'clock in the afternoon, then he says, "well, let's celebrate George's Birthday," so he went shopping and went home. That is about the time we parted.

Q. What time was this?

A. I would say about two or three o'clock in the afternoon.

Q. Do you know Mrs. Balestreri?

A. Yes. [144]

Q. How long have you known her?

A. About four years.

Q. Now, Mr. Balestreri and you were in partnership, is that right? A. Yes.

Q. Then he bought you out, is that right?

A. Yes.

Q. And you know of your own knowledge he has been living there and working on that farm for how long, Mr. Ikemoto?

A. On that farm?

Q. Yes. A. Living at the farm?

Q. And working?

A. Oh, I would say eighteen months or so.

Q. How long has he been working there?

A. Since the fall of 1950.

Q. And what are his hours of employment or work, do you know?

A. Well, Mr. Burns, well, between 6:30 and 7:00 to sundown.

Mr. Burns: That is all, thank you, Mr. Ikemoto.

(Testimony of Harry Ikemoto.)

Cross-Examination

By Mr. Riordan:

Q. You say you were a partner with Mario Balestreri? A. Yes.

Q. In a farming enterprise?

A. Yes. [145]

Q. When did you first become his partner?

A. Fall of 1949.

Q. 1949? A. Yes.

Q. Then you are no longer partners?

A. No.

Q. When did he buy you out?

A. I would say about eighteen months ago.

Q. From this date, you mean? A. Yes.

Mr. Riordan: No further questions.

Mr. Burns: That is all, Mr. Ikemoto, thank you.

(Witness excused.)

GEORGE KUBOTE

a witness called on behalf of the defendants, being first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: State your name, please.

A. George Kubote.

Direct Examination

By Mr. Burns:

Q. Mr. Kubote, where do you live?

A. I live Saratoga.

(Testimony of George Kubote.)

Q. Do you know the defendant, Mario Balestreri? A. Yes. [146]

Q. How long have you known him?

A. Since 1949.

Q. Since 1949? A. Yes, sir.

Q. You know him in a business and social way, is that right? A. Yes.

Q. Directing your attention specifically, Mr. Kubote, to Washington's Birthday, February 22nd, 1951, do you recall seeing Mr. Balestreri on that day? A. Yes, I did.

Q. Would you tell the ladies and gentlemen of the jury what time of day and where it was and with whom he was?

A. I will. We Japanese Buddhist custom, especially with United States people there, every year ancestry celebrated. My wife's father, my father-in-law——

The Court: Just tell when you saw Mr. Balestreri.

Q. (By Mr. Burns): Mr. Kubote, you say there was a Japanese Buddhist custom to celebrate Ancestors' Day, is that right? A. Yes.

Q. Was that type of celebration conducted at your home that day? A. Yes.

Q. What time of day?

A. I imagine I invite for about five o'clock. Mr. Balestreri be my home about six hour between five and a half. [147]

Q. He came to your house between 5:00 and 5:30? A. Yes.

(Testimony of George Kubote.)

Q. How long was he there?

A. Well, through dinner we talk about farmers.

Q. Was Mrs. Balestreri with him?

A. Yes.

Q. He wasn't living at the farm at that time?

A. No.

Q. He was living in San Jose?

A. San Jose, yes.

Q. Mr. Ikemoto was living at the farm?

A. Yes.

Mr. Burns: Thank you very much.

Cross-Examination

By Mr. Riordan:

Q. I understand you saw Mr. Balestreri between five and five-thirty o'clock in the evening?

A. Yes.

Q. February 22nd? A. That is right.

Mr. Riordan: No further questions.

Mr. Burns: Five o'clock to eleven o'clock, Mr. Riordan.

Mr. Riordan: Five o'clock or six o'clock to eleven o'clock?

Mr. Burns: That is right.

(Witness excused.) [148]

Thursday, August 20, 1953—9:30 o'Clock A.M.

MARIO BALESTRERI

was called as a witness on behalf of the defendants, and after being sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

The Clerk: Will you please state your name to the Court and to the jury?

The Witness: Mario Balestreri.

Direct Examination

By Mr. Burns:

Q. Mr. Balestreri, how old are you?

A. 52.

Q. And you are married? A. Yes, sir.

Q. What is your wife's name?

A. Delia Balestreri.

Q. Do you have children? A. Yes, sir.

Q. What are their names and ages?

A. Carl is 4½ years old and Marco is 19 months.

Q. Where do you reside?

A. At present I reside at Route 2, Box 605, Homestead Road.

Q. For what period of time have you resided there? A. Well— [149]

Q. Approximately.

A. Well, I would say approximately now maybe twenty months.

Q. Previous to that time where did you reside?

A. 60 South Cragmont, San Jose; Alum Rock Avenue.

(Testimony of Mario Balestreri.)

Q. Alum Rock Avenue in San Jose?

A. That's right.

Q. Mr. Balestreri, you have been previously convicted of a felony, is that right?

A. Yes, sir.

Q. And more than one felony?

A. Yes, sir.

Q. Any felonies involving narcotics?

A. Yes, sir.

Q. How many?

A. Two, and after I was confined in McNeils Island I was brought back and a third was put on and I pleaded guilty to the third.

Q. When did you last get out of the penitentiary?

A. I have been out of prison now since August, 1947.

Q. What type of release are you on?

A. I am on a parole, and after the parole half of it they call it probation.

Q. And you are presently on parole?

A. I am, sir.

Q. That period has not expired? [150]

A. Well, I don't know whether that period has expired or not because I have a conditional release which is expired and a probation.

Q. Under the terms of your release are you required to make reports to the Probation Office?

A. Yes.

Q. To what office do you make those reports?

(Testimony of Mario Balestreri.)

A. United States Probation and Parole of this Court, of this building.

Q. And you mean at this office?

A. Yes, sir.

Q. When did you marry Mrs. Balestreri?

A. I married Mrs. Balestreri in November of— November 8, 1947, permission from the United States Parole and Probation Department.

Q. Do you know Joseph Littman?

A. No, sir.

Q. Except from your acquaintance with him across the counsel table?

A. Well, I mean I know Joseph Littman here, yes.

Q. But you didn't know him prior to the time of his appearance in Court? A. No, sir.

Q. Do you know Abe Chapman?

A. I do. [151]

Q. For what period have you known him?

A. Well, I have known him for quite some time. Many years.

Q. Directing your attention to the year, 1950, did you have occasion to see Mr. Chapman?

A. Yes. I have seen Mr. Chapman on a couple of occasions, like—

Q. Where? A. Well, in San Jose.

Q. Did he have occasion to visit you or did you visit him? A. Oh, no, he visited us.

Q. At your home?

A. At our home, yes, sir.

Q. Who was with him? A. Sir?

(Testimony of Mario Balestreri.)

Q. Who was with him at the time?

A. His wife was with him only.

Q. The present Mrs. Thornton?

A. Yes, if that is her name. I knew her as Mrs. Chapman.

Q. Directing your attention to February 1st, 1950, Mr. Balestreri, where were you residing?

A. February 1st?

Q. The month of February, 1951.

A. February, 1951? It was March we were arrested. February, 1951, I was residing at 60 South Cragmont.

Q. What was your occupation? [152]

A. Farmer.

Q. With whom were you a partner?

A. Harry Ikemoto.

Q. The man who just left the stand?

A. Yes.

Q. Did you on February 1st, 1951, have occasion to see Abe Chapman? A. No, sir.

Q. Do you know Harry Winkelblack?

A. No, sir.

Q. Did you see him on February 1, 1951?

A. No, sir.

Q. At San Jose? A. No, sir.

Q. At your farm or any place? A. No, sir.

Q. Did you on the morning or afternoon, or at any time the next day, visit the Chinese supermarket in San Jose? A. No, sir.

Q. Do you know where that supermarket is located?

(Testimony of Mario Balestreri.)

A. I have learned where that supermarket is three or four nights ago.

Q. After you heard Mr. Winkelblack's testimony? A. Right, sir.

Q. You did not visit that supermarket or see Mr. Chapman in [153] that place, or Mr. Winkelblack? A. No, sir.

Q. What did you do February 22nd, 1951, if anything?

A. Well, if I recall, February the 22nd, 1951, at the hour, I would say, around 7:00 A.M., I went from my home at Alum Rock to the farm, which was about thirteen miles. I drove there. We tinkered around the place for just maybe, say, an hour or two, and we left there and went to Dr. Rogers Ranch, who had a tractor for sale. Mr. Ikemoto and I took our large truck, went to this farm, and we saw there the foreman of Dr. Rogers.

Q. Well, to be a little more brief, Mr. Balestreri, did you attempt to negotiate for the purchase of the tractor?

A. Yes, sir. We had a check there for \$250.00 and when we wanted to take the tractor away with us, the man in charge stated that Mr. Rogers had left——

The Court: (Interposing) It isn't responsive to the question. I only interrupt the witness because you are trying to bring out something, and they all make long speeches. That applies to the witnesses on both sides.

The Witness: I am sorry.

(Testimony of Mario Balestreri.)

The Court: What he asked was whether or not you had negotiations. Is the answer yes or no?

The Witness: Well, your Honor, does that mean did I buy it then? [154]

Q. (By Mr. Burns): Negotiate?

A. We spoke about it, yes.

Q. Well, Mr. Balestreri, you were not successful but you spent some hours, is that right?

A. Right.

Q. What did you do the balance of that day?

A. The balance of the day I worked at the farm, did some work, then I returned home.

Q. Do you recall that you saw Mr. Kubote that day?

A. Yes, sir. It was around five or six o'clock or thereabouts we went down to Mr. Kubote's home, had dinner, and stayed there, I guess until eleven, twelve, whatever it was. Very late at night.

Q. Now, in this indictment as one of the overt acts you are charged with on February 22nd having had a meeting with Mr. Chapman and Mr. Winkelblack in San Mateo County or Santa Clara County.

A. I don't know Mr. Winkelblack and have never been in San Mateo County.

Q. You have never been in San Mateo County?

A. What did you say? February?

Q. February 22nd did you see Abe Chapman?

A. No, sir.

Q. When was the last time prior to the month of February, 1951, you saw Abe Chapman? [155]

A. Oh, I don't know. Maybe a year or more.

(Testimony of Mario Balestreri.)

Q. Did you at any time negotiate the sale or purchase of narcotics from Abe Chapman or anyone during the years 1950 or 1951? A. No, sir.

Q. I show you a set of scales, Mr. Balestreri, marked Plaintiff's Exhibit 8, and ask you if you have ever seen them before?

A. Never saw them in my life.

Q. Did you have occasion to give those to Mr. Chapman at any time? A. No, sir.

Q. Did you ever visit the Andrew Williams supermarket in San Jose for the purpose of negotiating a sale of narcotics?

A. I don't know there is an Andrew Williams in San Jose, your Honor.

Q. On March 23rd did you see Abe Chapman?

A. I did not.

Q. Did you see him, Abe Chapman, or anyone with reference to Narcotics March 1st or March 15th? A. No, sir.

Q. Did you at any time in either the month of February or March, 1951, or at any other time in the year, 1951, have in your possession any heroin?

A. No, sir. [156]

Q. Did you at any time during that period conspire with Mr. Chapman, Mr. Winkelblack, or any other person, to violate the Narcotic Laws of the United States? A. No, sir.

Mr. Burns: That is all.

(Testimony of Mario Balestreri.)

Cross-Examination

By Mr. Riordan:

Q. Mr. Balestreri, do you know Tom's Bar in San Jose? A. No, sir.

Q. On Second Avenue?

A. Not a Tom's Bar on Second Street. There is no Tom's Bar on Second Avenue.

Q. There is no Tom's—

A. On Second Street, San Jose, because I checked that two nights ago.

Q. Is it on First?

A. There is a Tom's Bar at First and St. James.

Q. Is it Tommy's Bar at First and St. James?

A. Yes, sir, Tommy's.

Q. Thank you, Mr. Balestreri. You are a brother-in-law of Joe Olivero? A. Yes, sir.

Q. Who pleaded guilty to the conspiracy in this indictment? A. That I don't know.

Q. You have gone back to Kansas City, though, to see your [157] brother-in-law, Joe Olivero?

A. What is that, sir?

Q. You went back to Kansas City to see your brother-in-law, Joe Olivero?

A. 1950, by permission of the United States Probation and Parole officer.

Q. And Joe Olivero came out to San Jose to see you?

A. No, sir, not prior to 1950. Since we have seen our brother-in-law and family in December, 1950,

(Testimony of Mario Balestreri.)

we haven't seen no one of the family back there other than the sister-in-law and brother-in-law on the other side.

Q. When did you first meet Abe Chapman?

A. Well, about twenty odd years ago, I guess.

Q. Where? A. In prison.

Q. You were convicted in 1924 for violation of the Federal Narcotic Act? A. Right.

Q. Sentenced to four years in prison?

A. Correct, sir.

Q. That was in San Francisco, California?

A. Yes.

Q. Federal Court? A. Yes.

Q. Convicted again in 1929 for violation of the narcotics laws? [158] A. Yes, sir.

Q. In San Francisco? A. Right.

Q. Sentenced to twelve years? A. Correct.

Q. In 1937 you were convicted for counterfeit-
ing? A. Correct.

Q. Served fifteen years? A. Correct.

Q. San Francisco Federal Court?

A. Yes, sir.

Q. In 1937 you were also convicted for violating the narcotic laws in the Federal Court?

A. That is when I was confined for the other, yes, sir.

Q. Sentenced to five years? A. Correct.

Q. What prison did you meet Chapman in?

A. Well, let's see, that could have been—gee, this I wouldn't know, sir, because I served time in hospitals for quite a while.

(Testimony of Mario Balestreri.)

Q. Did Chapman ever send you any presents?

A. No, sir.

Q. Did you give Chapman any?

A. No, sir.

Q. Did Chapman bring something down to your house Thanksgiving [159] and Christmas, give you a present? A. Not that I know of.

Q. Do you know Russell Varsi?

A. No, sir.

Q. Didn't he come to your home with Chapman at one time? A. No, sir.

Q. Do you know Evan Rogers?

A. No, sir.

Q. Did you ever give any presents to Abe Chapman? A. No, sir.

Q. Did you ever give any narcotics to Chapman?

A. No, sir.

Q. Chapman ever give any to you?

A. No, sir.

Mr. Riordan: No further questions.

Mr. Burns: That is all.

(Witness excused.)

Mr. Burns: Defense rests.

Mr. Riordan: The United States rests, your Honor.

[Endorsed]: Filed July 20, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD
ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing documents, listed below, are the originals filed in this court, or true and correct copies of orders entered on the minutes of this court, in the above-entitled case, and that they constitute the record on appeal.

Indictment.

Minutes of Plea, April 10, 1952.

Verdict.

Judgment and Commitment.

Motion for New Trial and Affidavit in Support.

Order Denying Motion for New Trial.

Notice of Appeal.

Designation of Record on Appeal.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court, this 5th day of May, 1953.

C. W. CALBREATH,
Clerk.

[Seal] By /s/ WM. C. ROBB,
Deputy Clerk.

[Endorsed]: No. 14348. United States Court of Appeals for the Ninth Circuit. Mario Balestreri, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed May 5, 1954.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 14348

MARIO BALESTRERI,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S STATEMENT OF POINTS TO
BE RELIED UPON ON APPEAL AND
DESIGNATION OF RECORD ON APPEAL

Comes now the appellant Mario Balestreri, and advises the court in his appeal from the order denying his motion of his intention to rely upon each and all of the following points, to wit:

1. That the District Court abused its discretion in denying the motion for new trial made by appellant.

Appellant designates the following portions of the record to be printed and he believes that said portions are necessary to fully support and present his appeal:

1. The indictment.

2. Reporter's transcript of the testimony of the following witnesses at the trial of said action:

(a) Government witness Harry Winkelblack.

(b) Defense witnesses Abraham Chapulowitz, Mario Balestreri, Harry Ikemoto, George Kuboto.

(c) Judgment.

3. Motion for New Trial.

4. Affidavit of James E. Burns in support of a new trial.

5. Order Denying Motion for New Trial.

6. Notice of Appeal.

Dated: May 26, 1954.

/s/ JAMES E. BURNS,

Attorney for Appellant,
Mario Balestreri.

Receipt of copy acknowledged.

[Endorsed]: Filed May 26, 1954.

